

The Silver Tsunami: Courts and the Growing Elder Population

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Objectives

- o By the end of the session, participants will be able to:
 1. Describe the phenomenon known as the Silver Tsunami;
 2. Analyze the impact that an aging America will have on traffic safety; and
 3. Develop strategies to address criminal defendants who may be suffering decreased mental capacity, limited physical abilities, and a dearth of financial resources.

The Phenomenon
What is it?
What does it mean?

In 2010, how many people 65 and over were in the US?

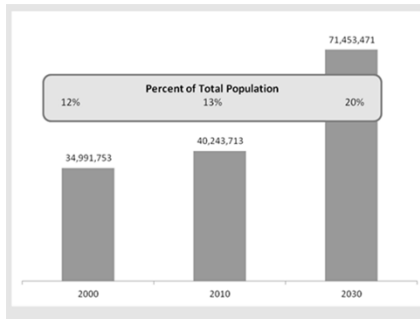
- o 40 million people
- o This amounts to 13% of the total population

In 2030, how many people 65 and over will there be in the US?

- o 72 million people
- o Nearly 20% of the total population
- o Up from 35 million in year 2000.

The Graying of the United States

| Year | 55 to 64 | 65 to 74 | 75 to 84 | 85 and up |
|------|----------|----------|----------|-----------|
| 1900 | 5.3 | 2.9 | 1 | 0.2 |
| 1910 | 5.5 | 3 | 1.1 | 0.2 |
| 1920 | 6.2 | 3.3 | 1.2 | 0.2 |
| 1930 | 6.8 | 3.8 | 1.3 | 0.2 |
| 1940 | 8 | 4.8 | 1.7 | 0.3 |
| 1950 | 8.8 | 5.6 | 2.2 | 0.4 |
| 1960 | 8.7 | 6.1 | 2.6 | 0.5 |
| 1970 | 9.2 | 6.1 | 3 | 0.7 |
| 1980 | 9.6 | 6.9 | 3.4 | 1 |
| 1990 | 8.4 | 7.2 | 4.1 | 1.3 |
| 2000 | 8.7 | 6.6 | 4.5 | 1.6 |
| 2010 | 11.8 | 7 | 4.3 | 1.9 |
| 2020 | 13 | 9.7 | 4.8 | 2.1 |
| 2030 | 10.6 | 10.7 | 6.7 | 2.5 |
| 2040 | 10.4 | 9 | 7.7 | 3.8 |
| 2050 | 10.8 | 8.9 | 6.6 | 4.8 |





Change Beyond the Numbers (65 and over)

| 1965 | 2010 |
|---|--|
| <ul style="list-style-type: none"> o 24% had graduated high school o 5% bachelor's degree or more | <ul style="list-style-type: none"> o 80% graduated high school o 23% bachelor's degree or more |

Economics

- o The number of older people living in poverty or in the low-income group has been decreasing.
 - o **Poverty**
 - o 1974: 15%
 - o 2010: 9%
 - o **Low Income**
 - o 1974: 35%
 - o 2010: 31%
 - o **High Income**
 - o 1974: 18%
 - o 2010: 31%
- o More people (especially women) continue to work past 55.

Wharton Study on Older Workers


- o **Myth.** Older workers cost more than younger ones.
- o **Reality.** While older workers may take longer to recover from injuries, studies show that they use fewer sick days on the whole than their younger counterparts. Health care costs are actually less for older workers because most no longer have small children as dependents on their health care plans. Workers also become eligible for Medicare at age 65, which can further reduce an employer's health care bills.

Wharton Study on Older Workers

- o **Myth.** Older workers are less productive on the job.
- o **Reality.** Older workers frequently outdo their younger colleagues. Older workers have less absenteeism, less turnover, superior interpersonal skills and deal better with customers. "The evidence is unbelievably huge," he notes. "Basically, older workers perform better on just about everything."

Wharton Study on Older Workers

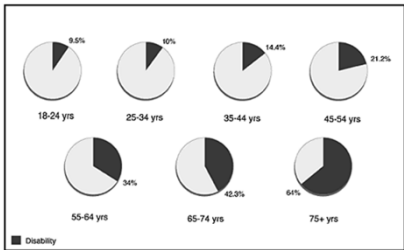
- o **Myth.** People at or near retirement age tend to lose interest in their jobs.
- o **Reality.** Studies find the opposite to be true. Those who worked past retirement age became more, rather than less, engaged and satisfied with their jobs.



Health Status

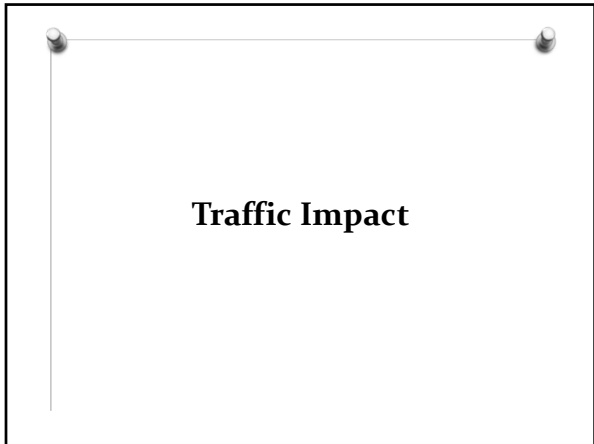
- o Americans are living longer than ever before
- o Children born since 2000 will most likely live to be 100.
- o Death rates for heart disease and stroke declined by more than 50% since 1981.
- o Death rates for chronic lower respiratory disease increased by 57% since 1981.

Disability as a Function of Age

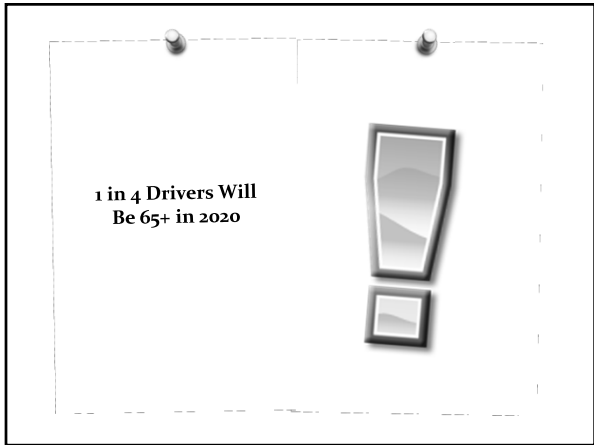


Selected Impairment by Age

| Impairment | Under 45 | 45-69 | 70-84 | 85+ |
|----------------------------|----------|-------|-------|-------|
| Arthritis and Bursitis | 4.2% | 35.6% | 52.9% | 53% |
| Back and Spine | 4.8% | 9.1% | 8.6% | 9% |
| Other Physical Impairments | 5.6% | 12.5% | 17.4% | 21.3% |
| Speech Impairments | 1.1% | 0.9% | 1.1% | 0.7% |
| Visual Impairments | 2.6% | 9.8% | 33.8% | 63.1% |
| Hearing Impairments | 3.9% | 16.7% | 31.5% | 48.4% |
| Mental Retardation | 0.6% | 0.2% | 0.1% | 0% |
| Diabetes | 0.6% | 6.1% | 10.1% | 7.9% |

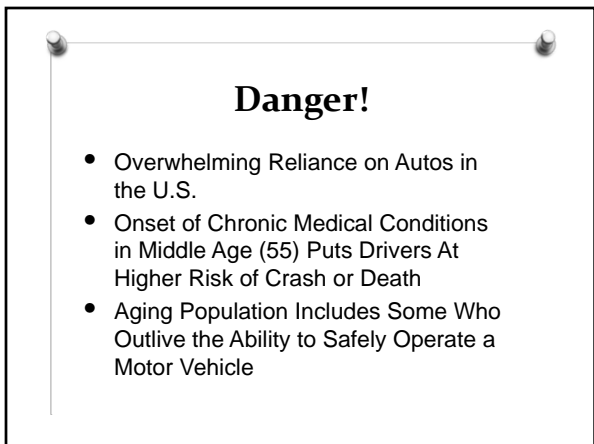


Traffic Impact



1 in 4 Drivers Will
Be 65+ in 2020





Danger!

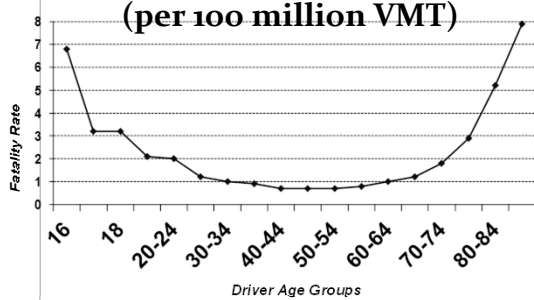
- Overwhelming Reliance on Autos in the U.S.
- Onset of Chronic Medical Conditions in Middle Age (55) Puts Drivers At Higher Risk of Crash or Death
- Aging Population Includes Some Who Outlive the Ability to Safely Operate a Motor Vehicle

Driving is Important

o Survey of 65+ top fears (CA)

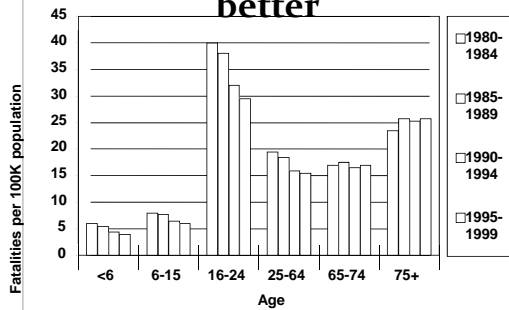
1. Being diagnosed with a fatal disease
2. Losing the ability to drive (and losing DL)
3. Spouse diagnosed with a fatal disease
4. Financial security of adult children

Fatality Rates by Age Group (per 100 million VMT)



Source: USA NHTSA Crash Data and Rates for Age-Sex Groups of Drivers

Fatality Rates - not getting better



(Source U.S.A. DOT FARS, 1980-1999)

Medically Impaired Drivers

- o Cognitive
 - o Alzheimer's
 - o Dementia
 - o Psychiatric
- o DUI
- o Drugs
- o Functional

Drivers with Cognitive Impairment

- o Loss of insight
 - o May not restrict driving
 - o Underestimates complexity of driving
 - o Overestimates abilities
 - o Reaction problems
 - o Confusion

Recognizing Cognitive Impairment

- | | |
|--|--|
| ▪ Confuses brake and gas. | ▪ Drives at inappropriate speed. |
| ▪ Gets lost. | ▪ Delayed responses to unexpected situations. |
| ▪ Near misses or dents on car, mailbox, etc. | ▪ Not anticipating dangerous situations. |
| ▪ Stops in traffic for no reason. | ▪ Forget how to start the car or where things are on the car (lights...) |
| ▪ Confusion at exits. | |
| ▪ Parks inappropriately. | |
| ▪ Hits curbs | |

Court Strategies

NCSC's Center for Elders and Courts
<http://www.eldersandcourts.org/>

- Court Checklist
- Elder Abuse Benchcard
- Prosecutor Checklist

Be Aware of Elder Abuse

o Generally defined to include physical, sexual, or emotional abuse, financial exploitation, neglect, abandonment, and self-neglect. Some definitions also refer to the failure to take reasonable steps to prevent harm caused by self-neglect.

Be Aware of Elder Abuse

o Elder abuse typically is characterized by

- o (a) intentional or negligent action that
- o (b) causes harm, serious risk of harm, or distress to
- o (c) vulnerable older persons.

o Some definitions of abuse also require a relationship of trust between the older person and the abuser, while others restrict the term to "vulnerable adults or elders."

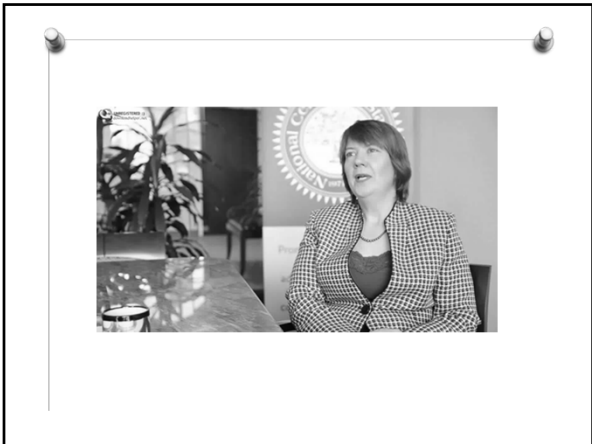


Three Important Concepts

- o Elder persons can be more vulnerable to abuse and exploitation if they lack capacity to make every day decisions, to give meaningful consent based on their ability to understand the meaning of transactions, or are subject to the undue influence of trusted people in their lives.

Consider Elder Docket

- o Sensitive to seniors' needs and fears
- o About 75% have never been in court for a criminal offense
- o Could be once a month or once a week!




Customizing Deferred

- o DL re-exam
- o Community Service that could be helpful
- o Transitioning to alternative transportation

Be Patient

Older persons may need more time to process information. Allow the older person sufficient time to respond. Remind attorneys to speak one at a time.



Accommodate Needs

Identify and consider needs pertaining to mobility, language and communication (assistive devices, interpreters and translators), medication, nutrition, hydration, oxygen, and other medical treatment. Older persons may also need more frequent breaks and comfortable seating. Provide accommodations as needed.



Provide a Tour of Courtroom

Court staff should offer to provide the older person with a tour of the courtroom in advance. Familiarize the older person with seating arrangements and the general process.



Consider Waiting Area

Make sure there is a safe, comfortable and accessible waiting area (preferably away from the assigned courtroom).



Be Flexible in Scheduling

Make efforts to be flexible in calendaring cases. Some older persons may need hearings scheduled at a time that best accommodates medical needs or fluctuations in capacity and mental alertness. Also consider the length of the hearing.

| | Wednesday | Thursday | Friday |
|-------|---------------------------------------|-------------------------------------|-------------------------------------|
| 10:00 | Opening Remarks | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information |
| 10:30 | ARC 26 - Software Services, Microsoft | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 11:00 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 11:30 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 12:00 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 12:30 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 1:00 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 1:30 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 2:00 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 2:30 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 3:00 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 3:30 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 4:00 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 4:30 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |
| 5:00 | ARC 26 - 6094 - Account Information | ARC 27 - 6094 - Account Information | ARC 28 - 6094 - Account Information |

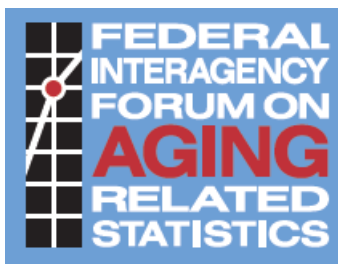
Be Prepared!

Selected Excerpts from

**OLDER
AMERICANS
2012**

Key Indicators of Well-Being

A Report from the



The Federal Interagency Forum on Aging-Related Statistics (Forum) was founded in 1986 to foster collaboration among Federal agencies that produce or use statistical data on the older population. Forum agencies as of June 2012 are listed below.

The full report can be accessed at:

http://www.agingstats.gov/agingstatsdotnet/Main_Site/Data/Data_2012.aspx

Highlights

Older Americans 2012: Key Indicators of Well-Being is one in a series of periodic reports to the Nation on the condition of older adults in the United States. In this report, 37 indicators depict the well-being of older Americans in the areas of demographic characteristics, economic circumstances, health status, health risks and behaviors, and cost and use of health care services. This year's report also includes a special feature on the end of life. Selected highlights from each section of the report follow.

Population

The demographics of aging continue to change dramatically. The older population is growing rapidly, and the aging of the "Baby Boomers" born between 1946 and 1964 (and who began turning age 65 in 2011), are accelerating this growth. This large population of older Americans will be more racially diverse and better educated than previous generations. Another significant trend is the increase in the proportion of men age 85 and over who are veterans.

- In 2010, there were 40 million people age 65 and over in the United States, accounting for 13 percent of the total population. The older population in 2030 is projected to be twice as large as in 2000, growing from 35 million to 72 million and representing nearly 20 percent of the total U.S. population (See "Indicator 1: Number of Older Americans").
- In 1965, 24 percent of the older population had graduated from high school, and only 5 percent had at least a Bachelor's degree. By 2010, 80 percent were high school graduates or more, and 23 percent had a Bachelor's degree or more (See "Indicator 4: Educational Attainment").

Economics

There have been decreases in the proportion of older people living in poverty or in the low-income group just above the poverty line, both in recent years and over the longer term. Among older Americans, the share of income coming from earnings has increased since the mid-1980s, partly because more people, especially women, continue to work past age 55. In addition, net worth increased almost 80 percent, on average, for older Americans between 1988 and 2007. Although most older Americans live in adequate, affordable housing, some live in costly, physically inadequate, or crowded housing. Additionally, major inequalities continue to exist; older blacks and people without high school diplomas report smaller economic gains and fewer financial resources overall.

- Between 1974 and 2010, there was a decrease in the proportion of older people with income below poverty from 15 percent to 9 percent and with low income from 35 percent to 26 percent; and an increase in the proportion of people with high income from 18 percent to 31 percent (See "Indicator 8: Income").

- In 2007, the median net worth of households headed by white people age 65 and over (\$248,300) was almost three times that of older black households (\$87,800). This difference is less than in 1998 when the median net worth of households headed by older white people was about six times higher than that of households headed by older black people. The large increase in net worth in past years may not continue into the future due to recent declines in housing values (See “Indicator 10: Net Worth”).
- Over the past four decades, labor force participation rates have risen for women

age 55 and over. This trend continued during the recent recession. Among men age 55 and over, the rise in participation rates that started in the mid-1990s also has continued, although to a smaller extent. As “Baby Boomers” approach older ages, they are remaining in the labor force at higher rates than previous generations (See “Indicator 11: Participation in the Labor Force”).

- In 2009, approximately 40 percent of older American households had housing cost burden (expenditures on housing and utilities that exceed 30 percent of household income). In addition to having cost burden as the most dominant housing problem, crowded housing was also fairly prevalent for some older American households with children in their homes (See “Indicator 13: Housing Problems”).

Health Status

Americans are living longer than ever before, yet their life expectancies lag behind those of other developed nations. Death rates for certain diseases have declined over time, while others have increased. Older age is often accompanied by increased risk of certain diseases and disorders. Large proportions of older Americans report a variety of chronic health conditions such as hypertension and arthritis. Nevertheless, most people age 65 and over report their health as good, very good, or excellent.

- Life expectancy at age 65 in the United States was lower than that of many other industrialized nations. In 2009, women age 65 in Japan could expect to live on average 3.7 years longer than women in the United States. Among men, the difference was 1.3 years (See “Indicator 14: Life Expectancy”).
- Death rates for heart disease and stroke declined by slightly more than 50 percent since 1981. Death rates for chronic lower respiratory disease increased by 57 percent in the same time period (See “Indicator 15: Mortality”).
- The prevalence of certain chronic conditions differed by sex. Women reported higher levels of arthritis than men (56 percent versus 45 percent). Men reported higher levels of heart disease (37 percent versus 26 percent) (See “Indicator 16: Chronic Health Conditions”).
- During the period 2008–2010, 76 percent of people age 65 and over rated their health as good, very good, or excellent. Non-Hispanic Whites were more likely to report good

health than their non-Hispanic Black or Hispanic counterparts (See “Indicator 18: Respondent-Assessed Health Status”).

Health Risks and Behaviors

Social and lifestyle factors can affect the health and well-being of older Americans. These factors include preventive behaviors such as cancer screenings and routine vaccinations along with diet, physical activity, obesity, and cigarette smoking. The quality of the air where people live also affects health. Many of these health risks and behaviors have shown long-term improvements, even though recent estimates indicate no significant changes.

- In 2010, about 11 percent of people age 65 and over reported participating in leisure-time aerobic and muscle-strengthening activities that met the 2008 Federal physical activity guidelines (See “Indicator 24: Physical Activity”).
- As with other age groups, the percentage of people age 65 and over who are obese has increased since 1988–1994. In 2009–2010, 38 percent of people age 65 and over were obese, compared with 22 percent in 1988–1994. Over the past several years however, that trend has leveled off for older women, with no statistically significant change in obesity between 1999–2000 and 2009–2010. During this same time period, the obesity prevalence increased for older men (See “Indicator 25: Obesity”).
- The percentage of people age 65 and over living in counties that experienced poor air quality for any air pollutant decreased from 64 percent in 2000 to 36 percent in 2010 (See “Indicator 27: Air Quality”).
- The proportion of leisure time that older Americans spent socializing and communicating—such as visiting friends or attending or hosting social events—declined with age. For Americans age 55–64, about 11 percent of leisure time was spent socializing and communicating compared with 8 percent for those age 75 and over (See “Indicator 28: Use of Time”).

Health Care

In the 1990’s and early 2000’s, health care costs rose rapidly for older Americans. However, average health care costs did not increase further between 2006 and 2008, after adjustment for inflation. Older Americans in the poor/near poor income category continued to spend a high proportion of their household income on health care services through 2009. In recent years increasing numbers of Medicare beneficiaries enrolled in HMOs and other health plans under the Medicare Advantage (MA) program.

- After adjustment for inflation, health care costs increased significantly among older Americans from \$9,850 in 1992 to \$15,709 in 2008. There was no significant change between 2006 and 2008 (See “Indicator 30: Health Care Expenditures”).
- From 1977 to 2009, the percentage of household income that people age 65 and over allocated to out-of-pocket spending for health care services increased among those in the

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2012-
2013

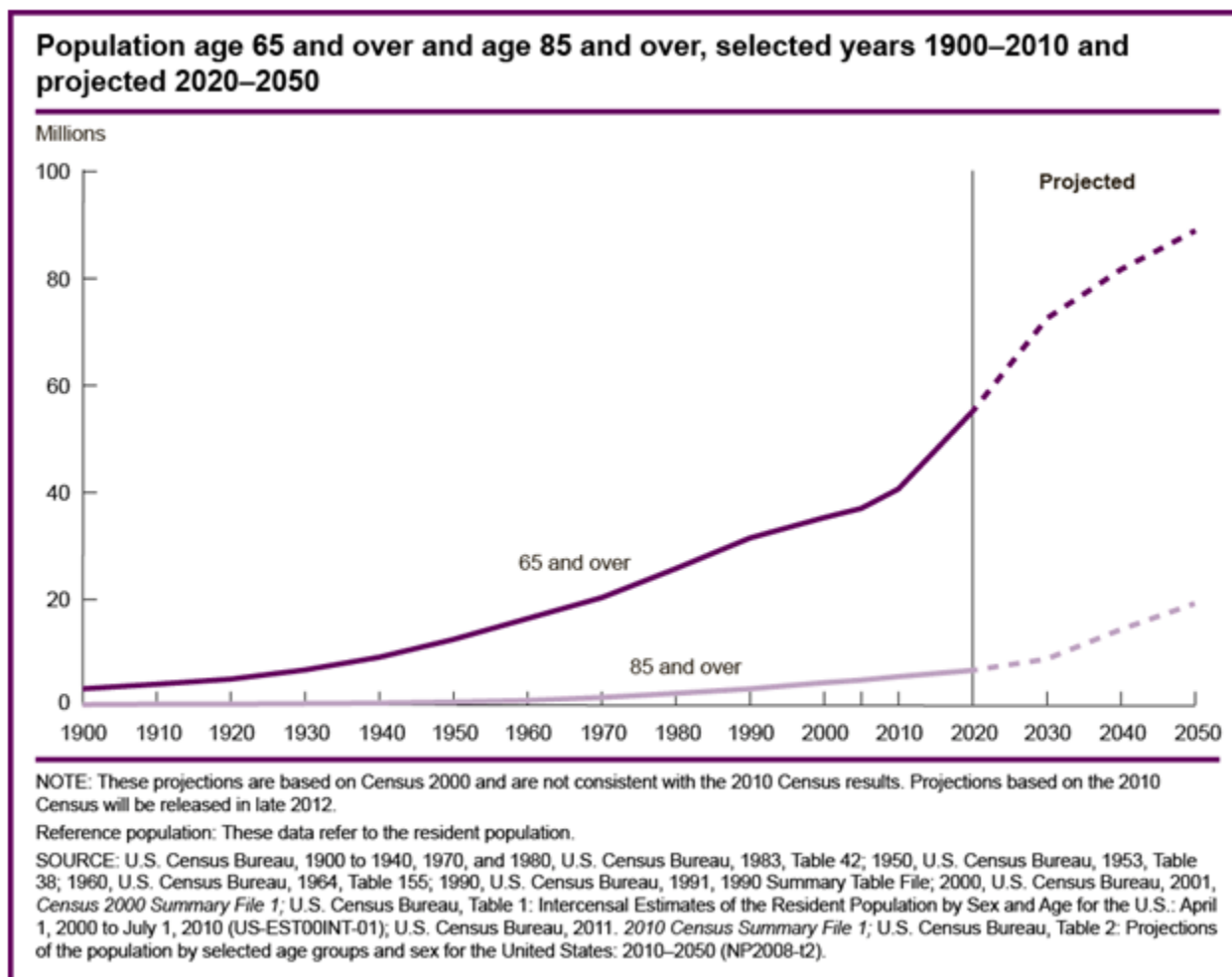
poor/near poor income category from 12 percent to 22 percent (See “Indicator 33: Out-of-Pocket Health Care Expenditures”).

- Enrollment in health maintenance organizations (HMOs) and other health plans under the Medicare Advantage (MA) program has grown rapidly in recent years. In 2005, 16 percent of Medicare beneficiaries age 65 or over were enrolled in an MA plan, compared with 28 percent in 2009 (See “Indicator 32: Sources of Health Insurance”).

Population

Indicator 1. Number of Older Americans

The growth of the population age 65 and over affects many aspects of our society, challenging families, businesses, health care providers, and policymakers, among others, to meet the needs of aging individuals.



- In 2010, 40 million people age 65 and over lived in the United States, accounting for 13 percent of the total population. The older population grew from 3 million in 1900 to 40 million in 2010. The oldest-old population (those age 85 and over) grew from just over 100,000 in 1900 to 5.5 million in 2010.
- The “Baby Boomers” (those born between 1946 and 1964) started turning 65 in 2011, and the number of older people will increase dramatically during the 2010–2030 period. The older population in 2030 is projected to be twice as large as their counterparts in 2000, growing from 35 million to 72 million and representing nearly 20 percent of the total U.S. population.
- The growth rate of the older population is projected to slow after 2030, when the last “Baby Boomers” enter the ranks of the older population. From 2030 onward, the proportion age 65 and over will be relatively stable, at around 20 percent, even though the absolute number of people age 65 and over is projected to continue to grow. The oldest-old population is projected to grow rapidly after 2030, when the “Baby Boomers” move into this age group.
- The U.S. Census Bureau projects that the population age 85 and over could grow from 5.5 million in 2010 to 19 million by 2050. Some researchers predict that death rates at older ages will decline more rapidly than is reflected in the U.S. Census Bureau’s projections, which could lead to faster growth of this population.¹⁻³

The Elder Population and the Courts

Information from the Center for Elders and the Courts: <http://www.eldersandcourts.org/Aging/The-Role-of-the-Courts.aspx>

Improving Access

Although people age at different rates and in different ways, adults over the age of 65 may have some level of physical or mental impairment.. For example, a 2009 study of cognitive functioning in people age 70-79 over eight years found that 30 percent maintained cognitive functioning, but 53 percent experienced some loss of function and 16 percent had major cognitive decline. Physical and mental impairments can impact an older person's ability to take part fully in court proceedings.

Accommodations in the Courtroom and Judicial Process

Courts can help ensure full access and participation by older persons with a physical or mental limitation by making accommodations to the courtroom setting, the handling of court hearings, and case and calendar management. The American Bar Association "Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse" recommend that courts "provide accommodations for persons with physical and mental deficiencies and, if necessary, hold hearings in cases involving elder abuse in the setting that best accommodates the needs of the

abused older person." The Eleazer Courtroom at Stetson University is a state-of-art facility that demonstrates how courtrooms can be modified to afford older people an appropriate legal forum.

The following examples of accommodations for older persons with physical or mental impairments have been implemented or recommended by judges, court managers and other professionals working to improve their courts' responses to elder abuse:

Courthouse Facilities and Role of Technology

Physical access to courthouses and the justice process are real concerns for older persons. Although each individual ages at a different rate, in 2005, 42% of adults over 65 reported some form of functional limitation. Common signs of advanced aging include dimming eyesight, failing hearing, loss of memory, decreased comprehension rate, and physical impairment. These impairments can decrease elderly persons' abilities to perform daily tasks, decrease mobility, and can affect elders' communication with others.

Promising Practices and Programs

Promising practices combine physical accommodations and technology, with the goal of ensuring physical access to the courthouse or participation via technology.

Videotaped testimony is generally used when a witness is found to be either physically or emotionally unable to testify in person. Older individuals, due to severe illness, physical impairment, and other disabilities associated with aging, are unable to be present at court proceedings. These circumstances make the use of videotaped testimony beneficial in elder cases.

Criminal code provisions in California and New York provide models for other states considering the use of video testimony in cases involving older litigants, victims, and witnesses. The California law authorizes the conditional examination of a witness in a criminal case who may be unavailable at trial. The New York statute bill acknowledges that elderly victims are often "unable to pursue restitution from the perpetrators" as a result of "advanced age and the length of court proceedings."

Language Services

Limited English proficiency can be another impediment to access to justice for older adults. Full and meaningful participation in court proceedings can be difficult for any person with limited English proficiency, and these difficulties are exacerbated for older adults who also may be experiencing declining physical or mental capabilities. Courts should be aware of the potential need for language services for older persons, including court interpretation, document translation, and availability of written materials in languages other than English. Numerous resources are available to assist courts in assessing the need for language services and for

providing access to those services. See the Language Access Resource Guide, available from the National Center for State Courts, for a compilation of resources. Among these resources is a benchcard that provides information related to the appointment and qualification of court interpreters in domestic violence protection order cases.

Resources

- Americans with Disabilities Act
- 10 Tips for Implementing the ABA Recommended Guidelines for Handling Cases Involving Elder Abuse
- 10 Tips for Judge's Hearing Cases with Elder Witnesses
- Identifying and Responding to Elder Abuse, Neglect, and Exploitation: A Benchcard for Judges

Texas Department of Public Safety
Driver Improvement Bureau
P.O. Box 4087, Austin, TX., 78773-0320

Examination/Investigation Request

Please complete this form if you have personal knowledge about a driver you believe is no longer capable of safely operating a motor vehicle.

- After reviewing this report, the Department may require the driver to take certain tests such as a vision, knowledge or driving test or provide other medical information.
- The Department may release information contained in this report pursuant to a request under the Public Information Act or in response to a court order.

| | | | | | | | |
|---|----------------------------|--|---------------|--------------|-----------------------|-------|----------|
| PERSONAL INFORMATION ON PERSON BEING REPORTED PLEASE COMPLETE ALL AVAILABLE INFORMATION. | NAME (LAST, FIRST, MIDDLE) | | DATE OF BIRTH | | DRIVER LICENSE NUMBER | | |
| | ADDRESS | | | CITY | | STATE | ZIP CODE |
| | LICENSE PLATE NUMBER | | | PHONE NUMBER | | | |

Describe in detail incidents related to or conditions about this driver which indicate the inability to safely operate a motor vehicle. Give specific dates, locations, accident reports, possible medical conditions and all other information which supports the need for testing or evaluation. You should report only information of which you have personal knowledge or physical evidence.

| | | | | | | | |
|--|--|--|--|------------------------|------|------------------|----------|
| PERSON COMPLETING REQUEST | IT IS A VIOLATION OF THE TEXAS PENAL CODE TO INTENTIONALLY FILE A FALSE REPORT. ANY PERSON WHO INTENTIONALLY FILES A FALSE REPORT MAY BE SUBJECT TO CRIMINAL PROSECUTION. | | | | | | |
| | PRINT FULL NAME (LAST, FIRST, MIDDLE) | | | RELATIONSHIP TO DRIVER | | TELEPHONE NUMBER | |
| | ADDRESS | | | CITY | | STATE | ZIP CODE |
| | SIGNATURE | | | | DATE | | |



COURT CHECKLIST

This checklist may be used by judges and court staff as a reminder of actions the court may take to accommodate the needs of older victims, witnesses and defendants.

STRATEGIES FOR HEARING CASES INVOLVING OLDER PERSONS

| | | |
|--|---|--|
| BE PATIENT | Older persons may need more time to process information. Allow the older person sufficient time to respond. Remind attorneys to speak one at a time. | |
| ACCOMMODATE NEEDS | Identify and consider needs pertaining to mobility, language and communication (assistive devices, interpreters and translators), medication, nutrition, hydration, oxygen, and other medical treatment. Older persons may also need more frequent breaks and comfortable seating. Provide accommodations as needed. | |
| PROVIDE A TOUR OF THE COURTROOM | Court staff should offer to work with attorneys and Victim/Witness staff to provide the older person with a tour of the courtroom in advance. Familiarize the older person with seating arrangements and the general process. Provide information on how the courtroom will be accommodated, as needed, to address special needs (such as hearing amplification devices). | |
| ENCOURAGE THE USE OF ADVOCATES | Court advocates are particularly helpful for older victims and witnesses who may be intimidated by their participation in court proceedings. Encourage the use of advocates throughout the judicial process. If advocates are not available, consider training and using court staff to guide older persons through the court process. | |
| CONSIDER WAITING AREA | Make sure there is a safe, comfortable and accessible waiting area (preferably away from the assigned courtroom). | |
| BE FLEXIBLE IN SCHEDULING | The court should make efforts to be flexible in calendaring cases. Some older persons may need hearings scheduled at a time that best accommodates medical needs or fluctuations in capacity and mental alertness. Also consider the length of the hearing. Avoid delays once the victim is present. | |



ABOUT THIS BENCHCARD

Elder abuse is a hidden problem in the justice system and may be an underlying factor in a variety of court cases involving older persons. This guide offers resources that courts may use to identify elder abuse, suggests a variety of actions that strive to protect the older victim of abuse, and encourages courts to engage in leadership opportunities in their local community.

WHAT IS ELDER ABUSE?

Elder abuse is generally defined to include abuse (physical, sexual, or emotional), financial exploitation, neglect, abandonment, and self-neglect. Every state has an adult protective services law with definitions and may have other relevant civil or criminal laws. Definitions vary from law to law and state to state.

IS ELDER ABUSE A CRIME?

Some states specifically criminalize “elder abuse.” In every state, acts constituting elder abuse may violate criminal laws (e.g., murder, sexual assault, battery, theft, fraud). Some state laws enhance penalties based on age or vulnerability status of the victim.

WHAT IMPORTANT CONCEPTS SHOULD I KNOW ABOUT ELDER ABUSE CASES?

Elder persons can be more vulnerable to abuse if they have diminished capacity to make every day decisions, cannot give meaningful consent because they do not understand the significance of a transaction, or are subject to undue influence by trusted people in their lives.

- **Capacity** is the cluster of mental skills, such as memory and logic, and behavioral and physical functioning, that people use in everyday life; capacity can fluctuate over time, situations and tasks.
- **Consent** requires individuals to be able to understand the transaction or activity, make judgments about it, and decide if it is something they choose.
- **Undue Influence** is the misuse of one’s role and power to exploit the trust, dependence, and fear of another to deceptively gain control over that person’s decision making or assets.

HOW CAN THE COURT IDENTIFY ELDER ABUSE AND NEGLECT?

Elder abuse may be an underlying concern for cases heard in all divisions of the court. An elderly victim of abuse may appear before the court as a defendant, a plaintiff, a witness, a juror, a petitioner, a respondent, or a victim. Awareness of “red flags,” such as the following, can help you identify possible cases of abuse.

- *Physical/Sexual Abuse* - Slap marks, unexplained fractures, bruises, welts, cuts, sores, burns, nonconsensual sexual contact
- *Emotional Abuse* - Withdrawal from normal activities, unexplained changes in alertness, or other unusual behavioral changes; aggressive or controlling caregiver
- *Financial Abuse/Exploitation* - Sudden change in finances and accounts, altered wills and trusts, unusual bank withdrawals, checks written as “loans” or “gifts,” loss of property, improper use of power of attorney
- *Neglect* – Lack of basic hygiene, lack of medical aids (glasses, walker, hearing aid, medications, etc.), hoarding, incapacitated person left without care, pressure ulcers, malnutrition, or dehydration

WHAT ARE THE COURT’S REPORTING REQUIREMENTS?

If you suspect elder abuse and you are a mandated reporter, you or a member of your staff are required to report the abuse to your local Adult Protective Services (APS) agency or law enforcement agency. Know your state’s mandatory reporting requirements and develop APS and law enforcement points of contact for the court. Assign court staff to collaborate on the creation of a reporting and investigation protocol between the courts, local justice agencies, APS, and, if applicable to your state, the Long-Term Care Ombudsman Program for cases involving individuals in nursing homes and other long-term care facilities.

WHAT TOOLS CAN HELP THE COURT RESPOND TO ELDER ABUSE?

The tools available to you vary based on court and community resources, the nature of suspected abuse, and the type of case you are hearing. The following tools offer strategies in the areas of assessment, remediation, and case management.

⇒ Assessment Tools

- Use expert witnesses, professional evaluators, court investigators, or trained interdisciplinary teams to assess the older person's capacity. To identify assessment resources, assign court staff to collaborate with local agencies (including APS and the Ombudsman Program), organizations, and individuals to develop a community resource guide for elders. Resources may include:
 - Public health physicians and psychologists (medical and mental health assessments)
 - Adult protective services (see state laws on eligibility for APS screening and services)
 - Occupational therapists (functional capacity evaluation)
 - Fire department or code enforcement agency (home safety inspection).
- Consider temporary court intervention that prompts medical assistance to treat reversible conditions that impact capacity. Conduct periodic review hearings to determine if court intervention continues to be needed.

⇒ Remediation Tools

- Issue a restraining or "no contact" order that is tailored to individual circumstances.
- Schedule review hearings to ensure compliance with court orders, including treatment programs and restitution if applicable.
- If appropriate, appoint a guardian *ad litem* to monitor the provision of services and compliance with protective orders.
- If the court employs mediation or other dispute resolution service, prioritize safety by being aware of imbalances between the parties.
- Ensure that plea agreements meet the needs of the older victim of abuse. Be creative in sentencing and the use of alternative sanctions.
- Encourage the use of victim/witness advocates throughout the judicial process. If advocates are not available, train court staff to guide older abused persons through the court process.
- Allow an opportunity for victims to provide impact statements at sentencing.

⇒ Case Management Tools

- Ensure the courtroom is accessible and accommodates physical and/or cognitive impairments.
- Expedite cases in which elder abuse is an underlying factor, including avoiding unnecessary continuances and delays.
- If possible, consolidate ancillary cases involving the same family or victim to create a consistent, efficient, and therapeutic outcome.
- Understand gradations of diminished capacity and calendar cases to accommodate medical needs and fluctuations in capacity and mental alertness.
- While preserving the defendant's right of confrontation, consider procedures that assure the elder victim's testimony is memorialized, such as videotaped examinations and conditional exams.
- Consider creating an Elder Protection Court/Docket that addresses a variety of complex cases requiring expertise in elder law. The Court/Docket should be presided over by a specially trained judge.

WHERE CAN I FIND MORE INFORMATION?

The National Center for State Courts Center for Elders and the Courts (CEC), www.eldersandcourts.org.

The ABA Commission on Law and Aging, www.abanet.org/aging.

The National Center on Elder Abuse, www.ncea.aoa.gov.



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PROSECUTOR CHECKLIST, WORKING WITH OLDER VICTIMS

Victim _____
Prosecutor _____

Case Number: _____
Date: ___ / ___ / ___

DIRECTIONS: Please check each item that you addressed. Victims should be provided with a separate survey that they can complete confidentially.

INTERVIEWING STRATEGIES

| | | |
|--|---|---|
| REMOVE DISTRACTIONS | Select a quiet place for the interview and remove distractions. Turn off cell phones and put away electronic devices. Meet with the older person in his or her own home whenever possible. | <input type="checkbox"/> <input type="checkbox"/> |
| TALK TO THE VICTIM ONE-ON-ONE | Talk to the victim one-on-one, separating him or her from family members and suspects, especially if it is unclear which family members will be witnesses and/or defendants. Consider the benefit of having an advocate present. | <input type="checkbox"/> <input type="checkbox"/> |
| ADDRESS NEEDS AND ISSUES OF CONCERN FIRST | Before inquiring about the information you need, ask the victim about concerns he or she might have, including physical or medical needs. Acknowledge those concerns and address them as soon as practical. If you are unable to address those concerns, connect the elder with another professional who can provide prompt assistance. | <input type="checkbox"/> <input type="checkbox"/> |
| DEVELOP RAPPORT | After addressing the victim's immediate concerns, develop rapport by asking the victim questions about his/her life, career and/or family before exploring case facts. Do not infantilize or patronize older persons (e.g., talking down, baby talk, raising your voice, addressing by first name, physical contact). | <input type="checkbox"/> <input type="checkbox"/> |
| BE PATIENT | Older victims may need more time to process information. Ask questions one at a time and allow the older person sufficient time to respond. | <input type="checkbox"/> <input type="checkbox"/> |

PREPARING FOR COURT

| | | |
|--------------------------------------|---|---|
| ACCOMMODATE NEEDS | Inquire in advance about the victim's need for accommodations and incorporate those accommodations into all parts of the criminal justice process, including courtroom appearances and pretrial meetings. Identify and consider needs pertaining to mobility, language and communication (assistive devices, interpreters and translators), medication, nutrition, hydration, oxygen and other medical treatment. | <input type="checkbox"/> <input type="checkbox"/> |
| CONSIDER TRANSPORTATION NEEDS | Anticipate the older victim's transportation needs to attend meetings and hearings. Work with Victim/Witness staff or other professionals (e.g., APS, law enforcement, etc.) to ensure appropriate transportation is provided when necessary. Ensure that someone other than the suspect or suspect allies will provide transportation for the older victim. | <input type="checkbox"/> <input type="checkbox"/> |
| TOUR THE COURTROOM | Work with Victim/Witness and court staff to provide the victim with a tour of the courtroom in advance. Familiarize the victim with seating arrangements and the general process. Work with court staff to ensure courtroom accommodations (such as hearing amplification devices) are available to the victim. | <input type="checkbox"/> <input type="checkbox"/> |
| CONSIDER WAITING AREA | Make sure there is a safe and comfortable waiting area (preferably away from the assigned courtroom) and a place for the victim advocate to sit during testimony. | <input type="checkbox"/> <input type="checkbox"/> |
| BE FLEXIBLE IN SCHEDULING | Schedule appearances and testimony of the victim at the best time for him or her. Be flexible to accommodate any special needs of the victim. Avoid delays once the victim is present. | <input type="checkbox"/> <input type="checkbox"/> |

