

Appendix G

Advocating in the Criminal Justice System

Advocate for Expedited Hearings and Trials.

Court delays may be particularly onerous to older abused persons who are nearing the end of their life span. Some may be frail, or losing their capacity to remember the abuse and their competency to testify about it. Victim service professionals, as advocates for elder abuse victims, need to do whatever they can to ensure that cases are not delayed unnecessarily. A court's standard operating practices may have a disparate impact on some older persons. Some state statutes provide for expedited hearings or trial preference status in cases involving elderly persons.

Advocate for Appropriate Court Accommodations.

In cases involving elder abuse, courts can accommodate persons with physical or cognitive impairments and, if necessary, hold hearings in the setting that best accommodates the needs of the older abused person.

- Courts can accommodate older abused persons through the use of a courtroom that is easily accessible, specially equipped to accommodate persons with disabilities, and perceived as nonthreatening.
- Judges also can accommodate older abused persons by holding a hearing or trial outside of the courthouse when necessary. While it is more difficult for a judge and court personnel to hold a proceeding outside of the courthouse, such an action would accommodate an older abused person who is homebound or bed-bound yet capable of presenting testimony. Additionally, there may be some benefit to having the judge see the victim's living conditions, particularly if that setting is where the abuse allegedly occurred.
- Other steps that the court can take to accommodate and protect older abused persons include arranging for the victim and the perpetrator to wait in separate areas, and making the perpetrator wait with the bailiff after the hearing so the victim can leave safely.

Ensure the Court's Sensitivity to an Individual's Fluctuation in Capacity.

The capacity of older persons may fluctuate with the time of day, use of medications, diet, and other factors. Older persons with dementia or other forms of cognitive impairment may experience "sundowning," during which they are more confused and less capable at the end of the day than they are at the beginning.

Courts, whenever feasible, should be flexible in scheduling hearings in order to accommodate the individual's fluctuations in capacity.

Heighten the Court's Sensitivity to Other Challenges to Older People Participating in the Judicial System.

Older people may face other challenges that could limit their ability to participate fully in the judicial process. Issues may include transportation; the inability of a frail older person to sit on hard benches all day long, waiting for his or her time before the judge; or the need of an older person to take medication or to eat at certain times of the day.

Advocate for Procedural Reforms.

In recent years, professionals in the fields of child abuse and elder abuse have been debating procedural innovations and reforms that might make it easier to get a victim's "story" before the court, in spite of that individual's fear of testifying or inability to testify due to incapacity or death. Some procedural innovations have been discussed:

- Videotape an older abused person's testimony prior to the trial for use during the trial in the event that the individual loses the ability to testify or dies before the trial.
- Depose the older victim should the victim become unavailable during the trial due to incapacity, incompetence, or death.
- Hold the hearing in a less confrontational setting than the courtroom, such as in chambers.
- Cross-examine the older abused person by closed-circuit television or videotape, so the victim does not have to experience the fear that may accompany sitting and testifying in the same room as the alleged perpetrator.
- Close the courtroom to the public, so the shame and humiliation experienced by the victim relating his or her personal situation in public might be reduced.
- Allow a prosecutor special latitude in questioning the victim, such as by allowing prosecutors to use leading questions or offer additional witnesses and corroborating evidence.

These are controversial issues. Many judges, prosecutors, practicing lawyers, and legal scholars question the merits of and need for these suggested changes in traditional procedure. Some believe that changing the procedures will not add anything of benefit. Others are more concerned with the implications these changes have for other types of cases and litigants. In addition, these proposals may raise constitutional due process questions, particularly in the criminal court setting.

In criminal prosecutions where a victim's competency to testify is in question, judges may permit the prosecutor special latitude in questioning the victim. Judges also may allow prosecutors to use leading questions and offer additional witnesses and corroborating evidence.