

**Missouri Association of Prosecuting Attorneys**  
**Special Victims Best Practices Subcommittee**  
**(Elder Abuse & Financial Exploitation Recommendations)**

*Adopted April 8, 2020*

Note: A best practices recommendation of the Missouri Association of Prosecuting Attorneys is the product of careful consideration by experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible or desirable to implement in every jurisdiction. There may be other methods in local jurisdictions to reach the same or similar objectives.

**Definition of Special Victims:** Special victims are victims of domestic violence, sexual assaults, elder abuse, child physical and sexual abuse, Internet crimes against children, human trafficking, harassment/stalking, persons with disabilities and victims with special needs.

For the purpose of these recommendations, elder abuse includes abuse of older persons and persons with disabilities.

**Best Practices Statement:** The dynamics of elder abuse create multiple challenges for prosecutors. Most elder abuse cases involve the victimization of elders by perpetrators with whom they have an ongoing and trusting relationship. Because they so often trust and depend on the perpetrator, victims may be slow to recognize and report abuse and reluctant to cooperate with criminal justice professionals. In order to overcome these challenges, prosecutors should work with law enforcement and community partners to achieve successful prosecutions of these crimes.<sup>1</sup>

**Recommendation #1:** Prosecutors should seek advice and specialized training in elder abuse and specifically in elder abuse prosecution. Specifically, elder abuse prosecution requires familiarity with the following topics:

- 1) §570.145, §565.184, §565.188 & §565.218 and other statutes, such as domestic assault, regular assault or harassment, which may be easier to prove in elder abuse cases.
- 2) The dynamics of elder and disabled victimization
- 3) Competency, as a fluid and non-static phenomenon
- 4) Undue influence
- 5) Resources for elder and disabled victims
- 6) Interview strategies with elder and disabled victims
- 7) Available assistive technology (such as their local Center for Independent Living, through <https://mosilc.org/mo-centers-db/>, or Missouri Assistive Technology, through <https://at.mo.gov/>)
- 8) Elder forensic medical evaluation
- 9) Financial practices and regulations (as needed on particular cases)

*Commentary: MOPS provides free and low-cost training on the issues surrounding elder abuse investigation and prosecution. A number of national organizations provide free webinars and access to*

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<sup>1</sup> Prosecuting Elder Abuse Cases, National Center for State Courts (2012).

*webinar recordings on the topic of elder abuse. If otherwise unaware, prosecutors should contact the MOPS Special Victims Resource Prosecutor to learn about training availability.*

**Recommendation #2:** In offices with more than one prosecutor, a specific prosecutor (or prosecutors, depending on the size of the jurisdiction) should be assigned to handle cases involving elder or disabled victims, regardless of the charge.

*Commentary: Prosecutors should establish a procedure by which cases involving elder or disabled victims can be flagged at the time of filing for a special designation/ caseload, regardless of the charge.*

**Recommendation #3:** Prosecutors should proceed with elder abuse prosecution based on the evidence available to them, not the victim's willingness or ability to "press charges". Victims don't press charges, prosecutors do.

**Recommendation #4:** Prosecutors should move elder abuse cases quickly through the system. *See Special Victims Initial General Recommendation # 1 & #9*

**Recommendation #5:** Elder abuse victims may have anticipated or unanticipated health issues at the time of trial. Prosecutors should seek to prepare their cases with admissible evidence that minimizes the importance of the victim's courtroom testimony. This can be done by:

- 1) Seeking to obtain a video taped deposition for the preservation of the elder victim's testimony pursuant to Rule 25.14 and §492.303, immediately upon the filing of the case. Pursuant to Rule 25.12, said deposition should occur in the county where the victim resides.
- 2) Seeking all available contextual evidence so that victim's lack of consent, the detriment to the victim and the perpetrators' undue influence of the victim will be otherwise provable.

*Commentary: Elder abuse cases often involve elder witnesses. Prosecutors should similarly seek protections for elder witnesses as well.*

*Depositions of elder victims and witnesses should occur in locations where the victim or witness is comfortable and accessible, such as their home, the facility in which they reside or a handicap accessible location.*

**Recommendation #6:** Prosecutors should obtain alternative victim contact information so that prosecutors can contact the victim even if the victim is not available at their direct contact information. In particular, prosecutors should do their best to obtain a trusted caregiver or family member's contact information so the prosecutor can maintain contact with the victim if the victim's cognitive or physical condition declines.

**Recommendation #7:** Prosecutors should work to ensure the victim's physical and psychological needs are met during the court process. Prosecutors should utilize the services of a victim advocate, a court support animal, community support, such as the Area Agency on Aging or Center for Independent Living and any other resources available to the prosecutor and pertinent to each victim's individual needs.

*Commentary: Prosecutors, whenever possible, should meet elder and disabled victims in their homes or when and where they are most comfortable.*

*When preparing for court, prosecutors should ask victims their needs and concerns about coming to court to testify. Prosecutors should prepare the court for any special needs the victim may have in order to be as comfortable and dignified as possible in the courtroom. In addition to accessibility, such as mobility, hearing and vision concerns, victims may have special needs including but not limited to needs related to medication, oxygen, blood sugar, pain and continence issues. Prosecutors should ask victims and their caregivers what times of day and week are best for alertness and acuity of the victim.*

**Recommendation #8:** Multi-Disciplinary Teams (MDTs) are a valuable tool in the successful investigation and prosecution of elder abuse. Prosecutors should convene a multi-disciplinary elder abuse response team with local professionals involved in elder care and elder abuse response, such as representatives from:

- 1) The elected prosecutor or delegated assistant prosecutor
- 2) Local law enforcement
- 3) Community & prosecutor based victim advocates
- 4) The Department of Health & Senior Services
- 5) Medical facilities, hospitals or emergency medical services
- 6) The Area Agency on Aging
- 7) The SB40 Board
- 8) The Public Administrator's Office
- 9) Local residential care facilities
- 10) The banking industry or other financial institution
- 11) The local Center for Independent Living

*Commentary: Local MDTs can be convened to either do systemic review of the local elder & disabled victim response or regular or ad-hoc case reviews of specific cases. While systemic review is healthy and productive, prosecutors should convene MDTs for specific case review wherever possible. Cases for case review may be chosen by the team or the prosecutor, or the team may choose to review every case, depending on the volume of cases in the jurisdiction*

**Recommendation #9:** Prosecutors should seek expert assistance in elder abuse cases, particularly financial exploitation cases. Prosecutors may find expert assistance from:

- 1) Experienced fraud prosecutors, at either the state or federal level
- 2) Medical professionals, such as physicians, nurses or Sexual Assault Nurse Practitioners
- 3) The Special Investigations Unit at Department of Health and Senior Services
- 4) Forensic accounting services

**Recommendation #10:** A prosecutor should seek restitution, including interest, on behalf of elder & disabled victims or their estates in all eligible cases pursuant to Section 559.110 RSMo. All reasonable efforts to determine accurate restitution amount should be made as soon as practical upon filing the case. *See Victim Services Best Practices Recommendation #8.1.*

*Commentary: Art. I, Sec. 32.1(4) of the Missouri's Constitution grant crime victims the right to restitution as provided by law. A victim can include the original victim of the crime, the victim's estate or heirs, the crime victim compensation fund, or an insurance company. Section 559.100 RSMo mandates that prosecutors enforce this right and provide the legal process for collection of restitution in eligible cases. Collection can occur as part of a diversion program or as part of a plea agreement. A prosecutor should ask the court to order specific amount of restitution at the time of sentencing, along with a minimum monthly amount. A payment schedule (showing interest) should be provided to the defendant. If the schedule changes due to missed payments, an updated schedule should be provided to the defendant as soon as practical. Restitution should be distributed to the victim as soon as possible, and on a regular schedule, ideally within 24 to 48 hours of receipt. Any outstanding balance should be placed on the record at the time of probation revocation and also recorded in the Judgment and Sentence, as well as the Commitment Order so that the Department of Corrections will collect restitution from the defendant while incarcerated.<sup>2</sup>*

**Recommendation #11:** Prosecutors should facilitate training for law enforcement on a number of elder abuse related topics, in order to develop the skills necessary for effective investigation and prosecution. These topics should include but are not limited to:

- 1) All items mentioned in Recommendation #1
- 2) The availability of the Child Advocacy Center for forensic interviews of disabled adults
- 3) The importance of the business record affidavit with any business record obtained as part of the investigation
- 4) The types of evidence to gather and preserve so that the prosecutor can prove the case in absence of the victim's or witness' testimony.
- 5) The importance of scene pictures, regardless of whether there is known damage or other evidence at the scene
- 6) The importance of gathering evidence of the victim's cognitive, medical and psychological condition, before, during and after the perpetrator's access to the victim.

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<sup>2</sup> The Commitment Order should include specific language that "Restitution has been ordered and is to be collected pursuant to §559.100 by the Missouri Board of Probation and Parole".