

APPENDIX A — GLOSSARY

Adult Protective Services (APS) -- "a community-based mechanism for investigating and protecting the elderly from abuse, neglect, and exploitation" (Nolan, "Protecting Judgment-Impaired Adults," Journal of Elder Abuse & Neglect, Vol. 2(3/4) (1990)).

Alternative Dispute Resolution (ADR) -- usually includes mediation, arbitration, conciliation, summary jury trials, and other procedures that differ from the traditional adversarial litigation and prosecution process. ADR may occur in the following three settings: (1) Court-Annexed Programs - sponsored, funded, often staffed and administered directly by the courts; (2) Court-Linked Programs - contracted with the courts or public agencies to provide dispute resolution services; (3) Independent Programs - profit or non-profit agencies available to the community for a variety of referral sources (Alternative Dispute Resolution for Judges: An ADR Primer for Judges, American Bar Association, 1989).

Capacity or Competency -- terms used, for the purpose of this study, to refer to a person's ability to make and then act upon personal and/or property decisions on his or her own behalf.

Criminal Case -- a case in which a misdemeanor or felony is alleged or prosecuted.

Criminal Court -- a court in which misdemeanors and/or felonies are prosecuted and punishments for those crimes include probation, fines, or jail/prison time (for this study, we are assuming that there may be differences between the handling of elder abuse cases in criminal court and in non-criminal court (see definition below)).

Elder Abuse (or Abuse) -- the intentional or unintentional abuse (commission) or neglect (omission) of an older adult by a person in a personal, social, professional or business relationship that results in physical, psychological, social, or financial consequences (based on the definition developed by Margaret F. Hudson, "Elder Mistreatment: Taxonomy with Definitions by Delphi," Journal of Elder Abuse & Neglect, Vol. 3(2) (1991)).

Enhanced Damages -- monetary awards for violations of certain civil laws that are increased (e.g. "treble damages") because of the nature or severity of the violation.

Enhanced Penalties -- penalties for violations of criminal laws that are increased when the victim is elderly and/or vulnerable.

Ex Parte Order -- a judicial proceeding, order, injunction, etc. is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested (Black's Law Dictionary, Revised 4th Edition).

Expedited Trials -- given that delay, whether normal or abnormal, in a case involving an older person may hamper the cause of justice (because the older person may die or become unable to testify due to illness or the inability to remember relevant events), some state laws expedite the trial process for certain types of cases involving elderly victims or claimants.

Fiduciary -- someone who has a fiduciary or confidential relationship with another person, such relationship being derived from a formal document such as a power of attorney, trust, or guardianship or from a relationship such as that between a caregiver and a care recipient.

Fiduciary Abuse -- abuse by persons who have a fiduciary or confidential relationship with the abused individual. "Fiduciary abuse includes misuse or blocking access to property, possessions or insurance, or theft or extortion of the same, or some combination thereof" (Heisler and Tewksbury, "Fiduciary Abuse of the Elderly: A Prosecutor's Perspective," Journal of Elder Abuse & Neglect, Vol. 3(4) (1991).

Guardian -- a court-appointed surrogate decisionmaker who acts on behalf of a person who is deemed to be incapacitated or incompetent to make personal and/or financial decisions (the term "guardian" is used generically; in some states the appropriate term might be conservator, committee, etc.).

Guardianship -- the process by which a person is determined to be incapacitated or incompetent and a guardian is appointed.

Guardian ad litem -- for purposes of this study, defined as an individual (who may or may not be an attorney) appointed by a court to act as the eyes and ears of the court by investigating and then advocating for the best interests of a person who is the subject of a petition for guardianship.

Hearsay -- "evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he or she has heard others say" (Black's Law Dictionary, revised fourth edition). Hearsay evidence is generally not admissible in court proceedings because the statements were not made under oath, the trier of fact is not able to observe the demeanor of the declarant, and the defense has no opportunity to cross-examine the declarant. Nevertheless, there are some exceptions to the rule that allow for admission of hearsay evidence under circumstances that may render the statement more credible. For example, "excited utterances" (i.e., spontaneous exclamations) and statements for the purpose of medical treatment or diagnosis may be admitted under an exception to the hearsay rule. (When the Victim Is a Child, 2nd ed., Nat'l Institute of Justice.)

Incapacity or Incompetency (or Incapacitated or Incompetent) -- terms used, for the purpose of this study, to refer to a person's inability to make and then act upon personal and/or property decisions on his or her own behalf.

Leading Questions -- questions which suggest to the witness the answer desired or which put into the witness' mouth the words to be echoed back (Black's Law Dictionary, Revised Fourth Edition).

Long Term Care Ombudsmen/Long Term Care Ombudsman Program -- a federally mandated program in each state that establishes a system of advocates to address problems of long term care facility residents.

Non-Criminal Court -- a court which handles cases other than the prosecution of misdemeanors or felonies, e.g. civil court, probate court, family court, etc.

Non-Criminal Remedies -- remedies available in non-criminal court, which may include such things as monetary damages for neglect or breach of contract or for injunctions or protective/restraining/stay-away orders issued by a judge to keep one person from coming near and potentially harming another person.

Self-Neglect -- commonly defined in state statutes as "the inability of a vulnerable adult to provide himself with services necessary for physical and mental health, the absence of which impairs or threatens the person's well-being" (Coleman and Karp, "Recent State and Federal Developments in Protective Services and Elder Abuse," Journal of Elder Abuse & Neglect, Vol. 1(3) (1989).

Undue Influence -- influence which deprives the person influenced of free agency or destroys freedom of his or her will and renders it more the will of another than his or her own (Black's Law Dictionary, Revised Fourth Edition).

Unified Family Court System (or Family Court) -- a single judicial administrative division that houses all courts with jurisdiction over cases related to families, including some or all of the following: elder and child abuse, domestic violence, guardianship, divorce, custody, visitation, etc. The concept of family court may include: a holistic approach to helping families; enhanced access to court and streamlined procedures for families that often have multiple problems; availability of social and mental health counseling; links with community resources; appropriate use of ADR; assignment of one judge and one social services team to one family; and broad-based continuing judicial education on family-related matters.