

# **Alone We Can Do So Little: The Importance of Collaboration in Responding to Financial Exploitation of Elders and Adults with Disabilities**

**ILLINOIS DEPARTMENT ON AGING**

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# A Few Preliminaries

- **Though my focus is on elders, much of this talk applies to adults with disabilities**
- **Though Susan isn't an "elder" the issues are much the same**
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- **Thank you (again) to Maureen Squires, Dana Wilkerson, Karen Kloppe, Holly Zeilke and the Illinois Department on Aging**
  
- **I need to hear from you!**

# Agenda

- 1. Case Example**
- 2. Dementia and Capacity**
- 3. Charging Financial Exploitation of Elders and Disabled Adults**
- 4. Some Facts About Financial Exploitation**
- 5. Conclusion**

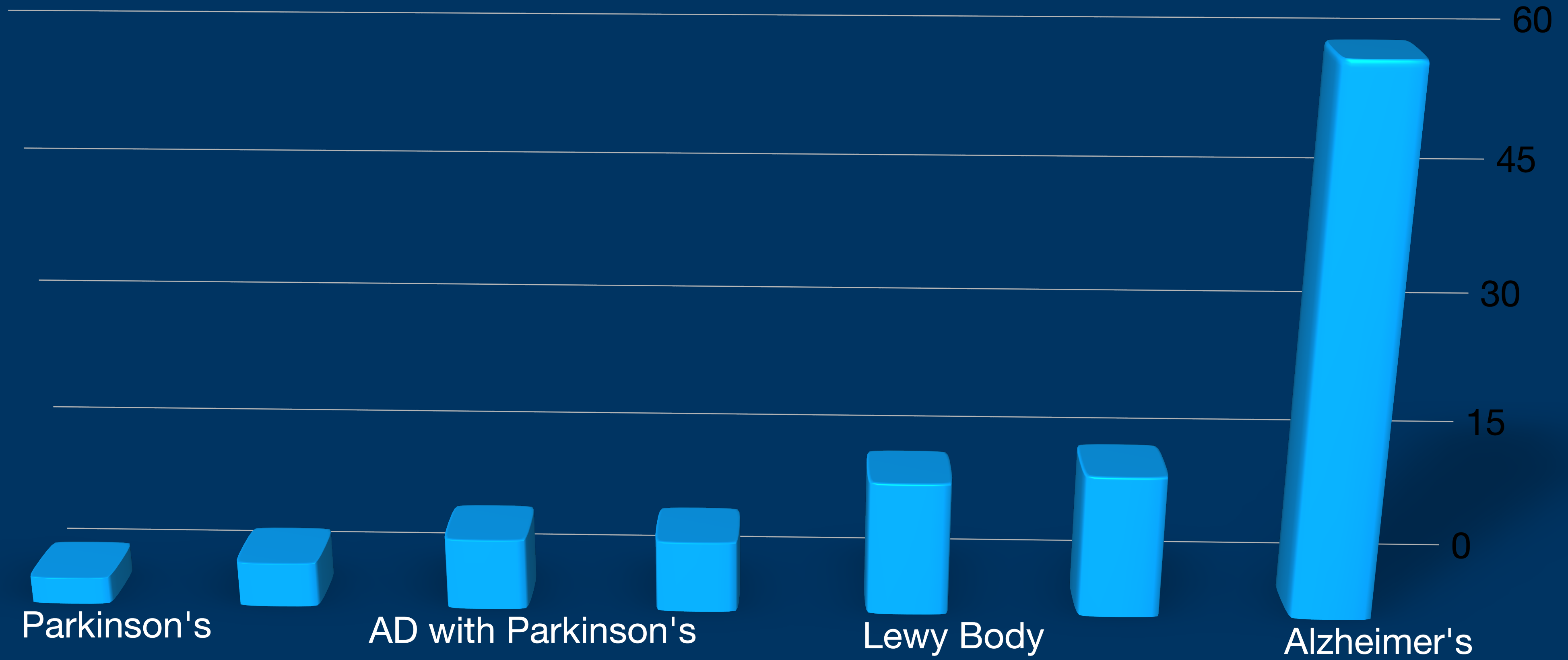
# Dementia and Cognitive Capacity



# Dementia

- **A general term for loss of memory, language, problem-solving, executive function and other thinking abilities severe enough to interfere with daily life**
- **Short-term memory usually goes before long-term memory**
- **Executive function may decline before memory does**

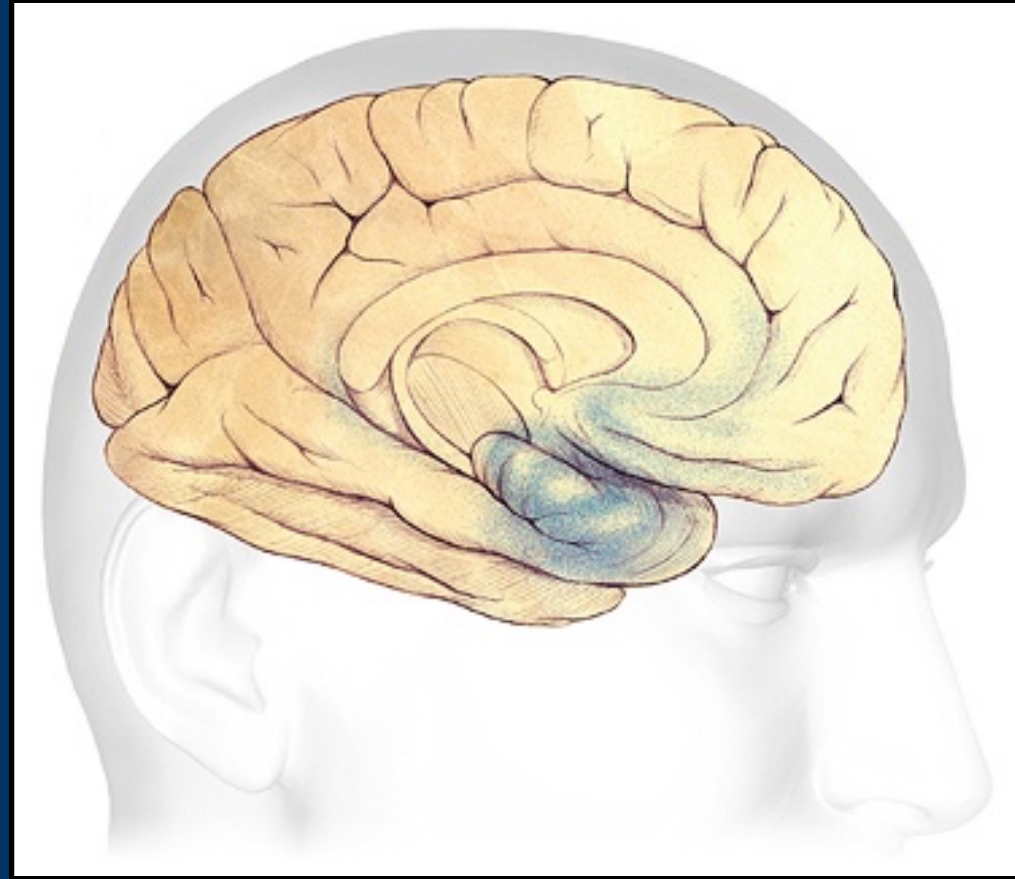
# Types of Dementia



**Almost 50% of people with dementia experience some form of abuse.**

Cooper, C., Selwood, A., Blanchard, M., Walker, Z., Blizard, R., & Livingston, G.

# Early Alzheimer's Disease

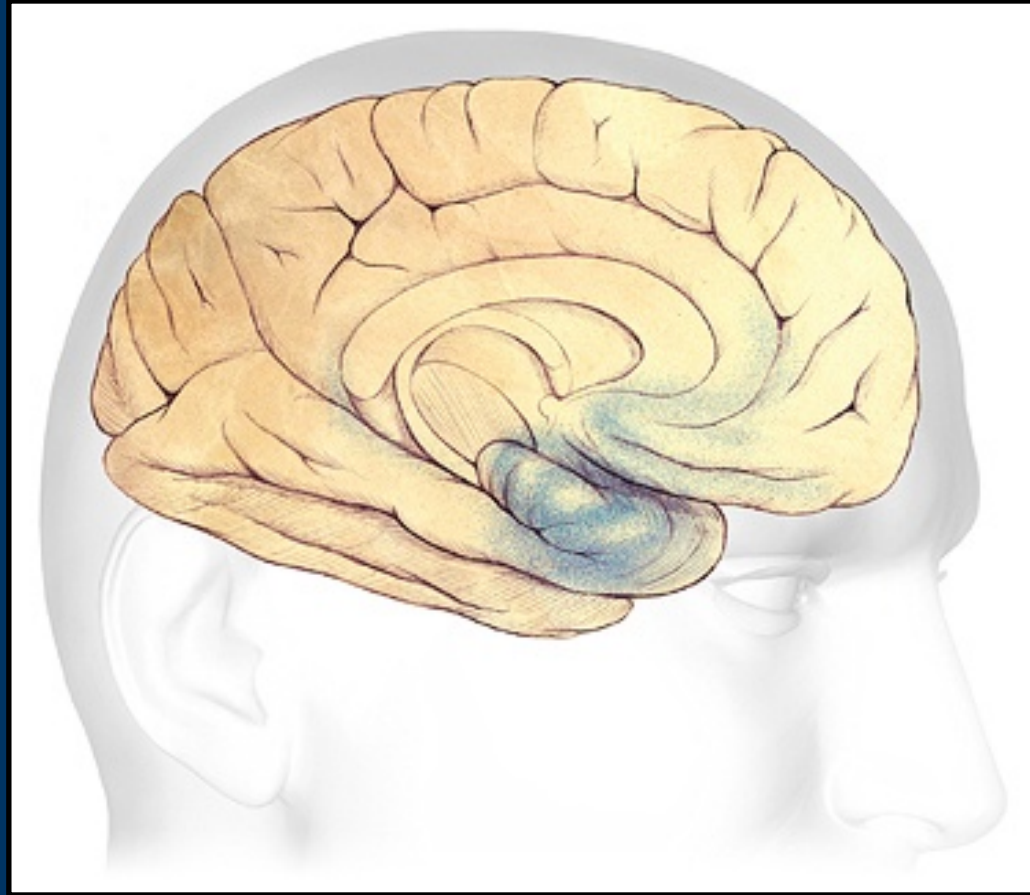


## Symptoms:

- Short-term memory loss
- Word loss
- Judgment impairment

**Financial Abuse**





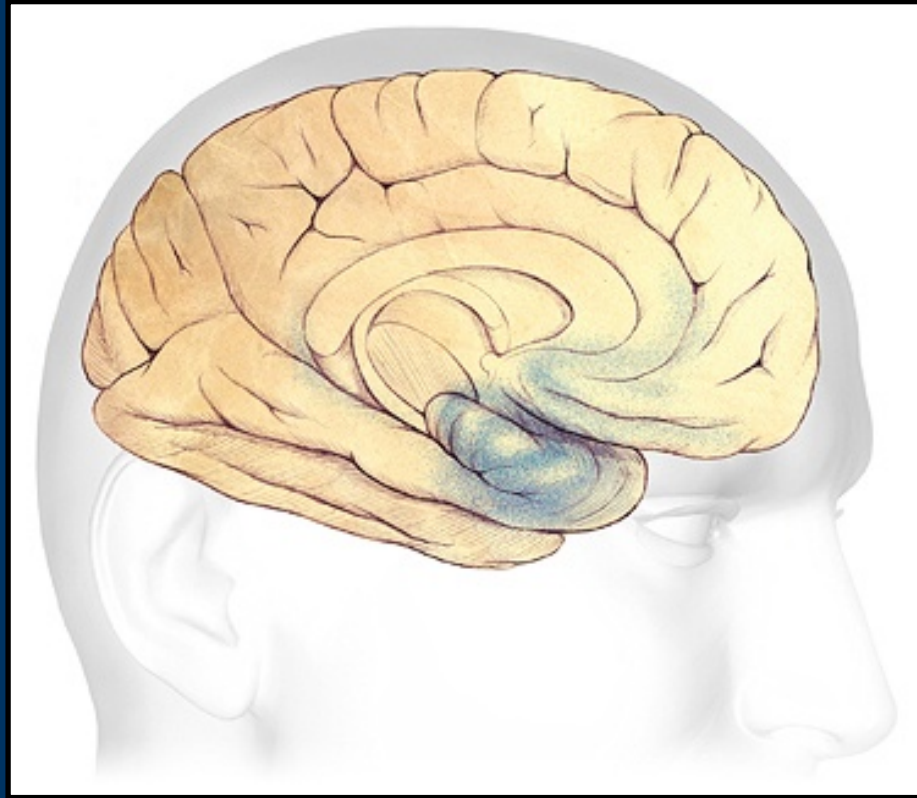
# Moderate Alzheimer's Disease

## Symptoms:

- Behavior Changes
- Loss of Insight

**Physical Abuse**

# Advanced Alzheimer's Disease



## Symptoms:

- Loss of Ability to Communicate
- Loss of Mobility
- Swallowing Impairment

**Neglect**

**Sexual Abuse**

# Cognitive Capacity

- **Clinical term and assessment of a person's mental abilities, what he/she can do**
- **One may have capacity to do one thing, but not another**
- **Loss of financial capacity extremely common in early stages of dementia**
- **Loss of other capacities typically occurs as dementia progresses**

# Why Capacity Matters

- **Consent is most common defense raised in elder financial cases:**
  - **“I was the only one who took care of her. She wanted me to have all of her money.”**
  - **“The money was a loan. I was going to pay him back.”**
- **We can't figure out if an elder consented unless we know whether they had capacity to consent**

# Capacity Screening Tests

- **Short, standardized tests that give basic information as to functioning, whether need for full-blown evaluation**
- **Often conducted by PCPs when concerns about memory loss**
- **Can be conducted by APS, other non-mental health professionals with training**
- **Common screening tests:**
  - **SLUMS – St. Louis University Mental Status Exam**

# Capacity Screening Tests

- **MoCA – Montreal Cognitive Assessment**
- **SPACED – Jason Karlawish**
- **Frontal Assessment Battery**
- **Mini-Mental Status Exam (MMSE)\***
  - **Screens for memory loss alone, not for impairment of executive function**
  - **Often misses cases of early dementia**

# Capacity Evaluations

- **Lengthier interview and testing**
- **Done by geriatricians and psychiatrists, psychologists, neuropsychologists, MSWs, with expertise in working with older patients**
- **Best done in the home**
- **Usually essential to accurate determination of whether victim had capacity at the time of the incident**

# Capacity Evaluations

- **Can assess for:**
  - **Financial capacity**
  - **Undue influence**
  - **Capacity to make medical decisions**
  - **Capacity to consent to sexual act**



# **Charging Financial Exploitation of Elders and People with Disabilities in Illinois**

# Crime of Elder Financial Exploitation

## 720 ILCS 5/17-56(a)

- Applies to victims who are 60+; or
- Are 18-59 and have a disability
  - "Disability" means a physical or mental disability, including:
    - developmental disability
    - intellectual disability
    - mental illness as defined under the Mental Health and Developmental Disabilities Code
    - **dementia** as defined under the Alzheimer's Disease Assistance Act

# Crime of Elder Financial Exploitation

720 ILCS 5/17-56(a)

- **Perpetrator stands in a position of trust or confidence with victim; and**
- **knowingly**
- **by deception or intimidation, obtains control over their property; or**
- **illegally uses their assets or resources**

# Position of Trust or Confidence

720 ILCS 5/17-56

- Is a parent, spouse, adult child, or other relative by blood or marriage
- Is a joint tenant or tenant in common
- Has a legal or fiduciary relationship
- Is a financial planning or investment professional
- Is a paid or unpaid caregiver

# Illegal Use of Assets

720 ILCS 5/17-56(c)

- **Misappropriation of assets or resources by:**
  - **undue influence**
  - **breach of a fiduciary relationship**
  - **fraud**
  - **deception**
  - **extortion**
  - **or use of assets/resources contrary to law**

# Undue Influence

- **The activities of a dominant person in either overpowering or inducing another to do something which that person would not otherwise do**
- **Usually involves pattern of grooming including lying, undermining of confidence, creating dependence, intermittent acts of kindness**

# Theft

720 ILCS 5/16-1

- **A person commits theft when he/she knowingly**
  - **obtains or exerts unauthorized control**
  - **over property of the owner**

# Illinois' Elder Hearsay Statute

725 ILCS 5/115-10.3

- **Allows for the admission of statements of eligible adult under Adult Protective Services Act, who has cognitive impairment or physical infirmity**
- **Where such statement describes any element of offense that is the subject of a prosecution of abuse, neglect, or financial exploitation of the adult**
- **Provided adult is unavailable and there is corroborative evidence of the act**
  - **\*Significantly limited by Crawford v. Washington, 541 US 36 (2004) (precludes admission of out-of-court testimonial statements by unavailable declarant where no prior opportunity to cross-examine)**



# State's Pretrial Motions

**Motion to Admit Susan's Statements About Will to Civil Attorneys**

**Motion to Admit Susan's Statements About Her Feelings for Defendant**

**Granted.**

**A statement of declarant's then existing state of mind, emotion, sensation, or physical condition to prove the state of mind, emotion, sensation, or physical condition of another declarant at that time or at any other time when such state of the other declarant is an issue in the action.**

**III. R. Evid. 803(3)(B)**

# State's Pretrial Motions

## Motion to Admit Susan's Statements to Rebut Other Hearsay

**Granted.**

**When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), (E), or (F), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness.**

**III. R. Evid. 806**

# Hearsay to Rebut Hearsay

- **In pretrial motions, defense stated they would be offering Susan's statements that she loved Allan, wanted him to have everything**
- **Therefore, Court ruled that State could offer statements to rebut those statements**
- **Result: all of Susan's statements on these topics were admitted**

# Preserving Victims' Testimony

**If it appears to the court in which a criminal charge is pending that the deposition of any person other than the defendant is necessary for the preservation of relevant testimony because of the substantial possibility it would be unavailable at the time of hearing or trial, the court may order the taking of such person's deposition for use as evidence at a hearing or trial.**

**Ill. R. Evid. 414**

# **Some Facts About Financial Exploitation of Elders and People with Disabilities**

# Elder/Disabled Adult Financial Exploitation

- **Often co-occurring with neglect, physical violence, sexual abuse**
- **Very often leads to significant declines in victim's physical and mental health**
- **Victims often left with nothing**
- **Most common form of abuse of this population**

**Nearly 1 in 5 elders has been the  
victim of financial abuse.**

Investor Protection Trust  
[http://www.investorprotection.org/downloads/  
IPT\\_EIFFE\\_Medical\\_Survey\\_News\\_Release\\_03-22-16.pdf](http://www.investorprotection.org/downloads/IPT_EIFFE_Medical_Survey_News_Release_03-22-16.pdf)

**Elder financial exploitation and caregiver neglect are tied for the highest mortality rate (lowest survival) of all forms of elder abuse, including physical abuse.**

- Journal of Elder Abuse & Neglect Vol 28 2016 Issue 2



# The Problems We Face in Prosecuting These Cases

- **Consent as most common defense**
- **Victim often unavailable to prove it wasn't granted**
- **Capacity to consent frequently a question**
  - **Inadequate tools to screen, test for incapacity**
  - **Over-reliance on MMSE**
  - **Difficulty in measuring capacity in past**

# The Problems We Face in Prosecuting These Cases

- **Lack of access to necessary capacity experts**
- **Lack of access to forensic accountants**
- **Under-reporting by public, mandatory reporters**
- **Civil attorneys may be unwittingly drawn in to assist perpetrator**

# The Problems We Face in Prosecuting These Cases

- **Lack of collaboration between the many involved professionals**
  - **civil attorneys**
  - **prosecutors**
  - **law enforcement**
  - **health care professionals**
  - **APS**
  - **service providers**
  - **financial services industry**

# Collaboration on Elder Abuse Cases

We are making progress

- **Elder Abuse Multidisciplinary Teams**
  - **Teams of APS, law enforcement, prosecutors, AAA, civil attorneys, mental health, health care, etc.**
    - **Dedicated prosecutors and detectives are essential**
  - **Meet regularly to staff cases of elder/disabled adult abuse, neglect, and financial exploitation**
  - **Essential to determining the best path forward in complicated case**

# Collaboration on Elder Abuse Cases

## Elder Abuse Multidisciplinary Teams

- **Illinois is far ahead of the curve**
  - **TRIADs**
  - **FAST Teams**
  - **Other MDTs**
  - **Elder Justice Task Force**
- **Your community needs you**

# **Example of Statutory Authority for MDT Information Sharing**

## **Washington State - RCW 74.34.320**

**(2) Members must disclose to each other confidential or sensitive information and records, if the team member disclosing the information or records reasonably believes the disclosure is relevant to the duties of the vulnerable adult advocacy team.**

**(3) Prior to participation, each member of the vulnerable adult advocacy team must sign a confidentiality agreement that requires compliance with all governing federal and state confidentiality laws.**

**(5) Information and records communicated or provided to vulnerable adult advocacy team members, as well as information and records created in the course of an investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. The disclosed information may not be further disclosed except by law or by court order.**

# Feel free to contact me

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• Thank you to Laura Mosqueda, Candy Heisler