



ELDER ABUSE CASES

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Studies Vary: 2 to 10% of all over 65 are victims of elder abuse

Estimated 551,000 elderly people experience abuse in the United States every year. (National Incidence Study on Elder Abuse)

Only 1 of 14 (some say 1 of 25) cases ever reported or discovered
Those that are abused have a 300% higher chance of death. (National Council on Aging)

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES (DARS) 2018 ANNUAL REPORT



APS reports grew an additional 16% last year compared to last year.

- Substantiated cases of financial exploitation jumped 30% compared to last year.
- In 2010, 18% of Virginia's population was 60 or older (1.4 million)
- By 2030, about 24% of the population is expected to be 60 or older (2.3 million)
- By 2030, Virginia will have more seniors as a percentage of the population than Florida does today

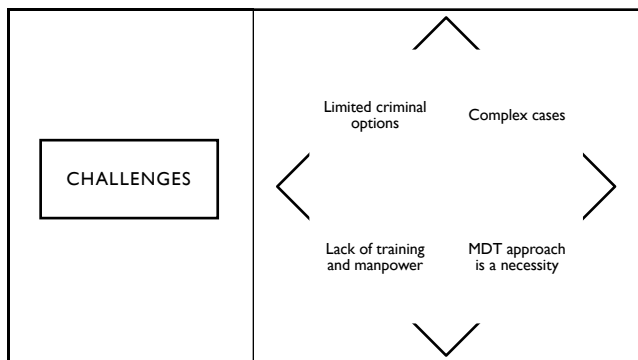
THREE YEAR COMPARISON OF APS REPORTS			
	<u>2016</u>	<u>2017</u>	<u>2018</u>
Total Rpts. Received	23,432	27,105	31,436
Rpts. Investigated	17,764	19,913	21,461
Total Rpts. Substantiated	9,755	10,920	11,924

WHAT IS ELDER ABUSE

- Physical
- Sexual
- Emotional
- Confinement
- Passive Neglect
- Willful Deprivation
- Financial Exploitation

ELDER ABUSE

- Hidden Crime
- Media has not reported it vigorously
- People want to deny it happens
- Difficult to investigate and prosecute



Victim issues	Prosecution Issues
<ul style="list-style-type: none"> ▶ Unwillingness or unavailability ▶ Competency concerns ▶ Mobility & transportation issues ▶ Medical issues ▶ Family connections 	<ul style="list-style-type: none"> ▶ Proving lack of consent ▶ Undue influence & apparent legal authority (or actual) ▶ Need for forensic analysis of financial documents ▶ Need for medical expert testimony ▶ End of life medical issues

	<p>VIRGINIA CODE §18.2-369</p>	<p>§ 18.2-369. Abuse and neglect of incapacitated adults; penalty.</p> <p>A. It shall be unlawful for any <i>responsible person</i> to <i>abuse</i> or <i>neglect</i> any <i>incapacitated adult</i> as defined in this section.</p>
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	§18.2-369	<ul style="list-style-type: none"> • Prohibits abuse and neglect of incapacitated adults, not elderly adults • Differences from incapacitated victims in the financial exploitation statute – physical or mental incapacity • Requires defendant be responsible for care • Similar to Child Abuse/Neglect statute (§18.2-371.1)
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	RESPONSIBLE PERSON	<p>"Responsible person" means:</p> <ul style="list-style-type: none"> • a person who has responsibility for the care, custody or control of an incapacitated person by operation of law, <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • who has assumed such responsibility voluntarily, by contract or in fact.
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	ABUSE	<p>Abuse:</p> <ul style="list-style-type: none"> • Causes physical injury or pain <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as substitute for treatment • (Includes chemical restraints)
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	<p>NEGLECT</p>	<p>Neglect:</p> <ul style="list-style-type: none"> • Knowing and willful failure • By responsible person • To provide treatment, care, goods or services • Results in injury or endangers safety
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	<p>INCAPACITATED ADULT</p>	<ul style="list-style-type: none"> • "Incapacitated adult" means <ul style="list-style-type: none"> • any person 18 years of age or older • who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes • to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning their well-being
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	<p>KNOWING AND WILLFUL</p>	<ul style="list-style-type: none"> • A willful act is one done with a bad purpose, or without justifiable excuse, or without ground for believing it is lawful. • A willful act is intentional, or knowing, or voluntary, as distinguished from accidental. • The terms "bad purpose" or "without justifiable excuse" require knowledge that the particular conduct will likely result in injury or illegality.
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No responsible person shall be in violation of this section whose conduct was:

- (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf;
- (ii) in accordance with a declaration by the incapacitated person under the Health Care Decisions Act (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney;
- (iii) in accordance with the wishes of the incapacitated person or a person authorized to consent on behalf of the incapacitated person and in accord with the tenets and practices of a church or religious denomination;
- (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated person; or
- (v) a bona fide, recognized or approved practice to provide medical care.

§ 63.2-1605 MANDATED APS REPORTS TO LAW ENFORCEMENT

C. The local department . . . shall immediately refer the matter and all relevant documentation to the local law-enforcement agency . . . upon receipt of an initial report pursuant to § 63.2-1606 involving any of the following :

1. Sexual abuse as defined in 18.2-67.10;
2. Death, serious bodily injury or disease as defined in 18.2-369 that is believed to be the result of abuse or neglect; or
3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.
4. Suspected financial exploitation of an adult;

<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;">PUNISHMENT</div>	<p>No serious injury or disease = Class I misdemeanor</p> <p>2nd offense = Class 6 felony</p> <p>Serious injury or disease = Class 4 felony</p> <p>Death = Class 3 felony</p>
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SERIOUS BODILY INJURY OR DISEASE	Including but not limited to: Fracture Disfigurement Severe burn or laceration Mutilation Maiming Life-threatening internal injuries or conditions
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OTHER CRIMES	<table border="1"><tr><td>Assault and Battery</td><td><input type="checkbox"/></td></tr><tr><td>Abduction (Inappropriate restraint)</td><td><input type="checkbox"/></td></tr><tr><td>Malicious Wounding</td><td><input type="checkbox"/></td></tr><tr><td>Murder</td><td><input type="checkbox"/></td></tr></table>	Assault and Battery	<input type="checkbox"/>	Abduction (Inappropriate restraint)	<input type="checkbox"/>	Malicious Wounding	<input type="checkbox"/>	Murder	<input type="checkbox"/>
Assault and Battery	<input type="checkbox"/>								
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PHYSICAL ABUSE SYMPTOMS			
Bruising of Varied Age and Patterns	Broken Bones and Dislocations	Internal Injuries	Rope or Strap Abrasions
Unexplained Sprains	Cigarette Burns	Unexplained Tooth Loss	Clumps of Hair Missing
Burns from Water or Appliances			

Symptoms of Neglect

Bedsores Poor Hygiene Dehydrated Skin Rashes

Untreated Medical Conditions Isolation from friends, family and community Worsening Dementia

PHYSICAL ABUSE & NEGLECT

Victim usually lives with abuser

Victim usually single

May be other family members in home

Abuser often wants to gain power over victim

Often drug or alcohol abuse present in abuser

Sometimes it is the ignorance of the caregiver trying to keep a parent or loved one at home.

PICTURES AS EVIDENCE § 63.2-1605

- With informed consent of adult or legal representative,
- APS SHALL take photographs, video recordings, or appropriate medical imaging of adult and environment as long as such measures are relevant to the investigation and do not conflict with § 18.2-386.1.
- However, if the adult is determined to be incapable of making an informed decision and of giving informed consent and either has no legal representative or the legal representative is the suspected perpetrator of the adult abuse, neglect, or exploitation, consent may be given by an agent appointed under an advance medical directive or medical power of attorney or by a person authorized, pursuant to § 54.1-2986, in the event no agent or authorized representative is immediately available, then consent shall be deemed to be given

SEXUAL
ABUSE

Sexual abuse means touching, fondling, intercourse, or any other sexual activity with an older adult, when the older adult is unable to understand, unwilling to consent, threatened, or physically forced.

SYMPTOMS

Bruising on breast, inner thighs, and external genitals	Bleeding, pain, or irritation of genitals or anal area	Stained, torn, or bloody underwear	Sudden problems sitting or walking
STD's	Inappropriate relationships between the perpetrator and the victim	Elder SAYING they are being sexually abused!!!	

SEXUAL
ABUSE

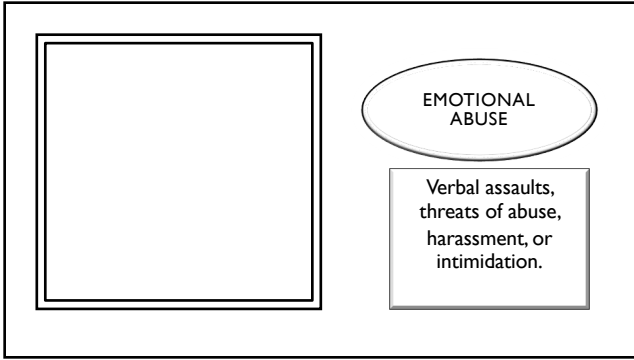
Pennsylvania Coalition Against Rape (PCAR) reports:

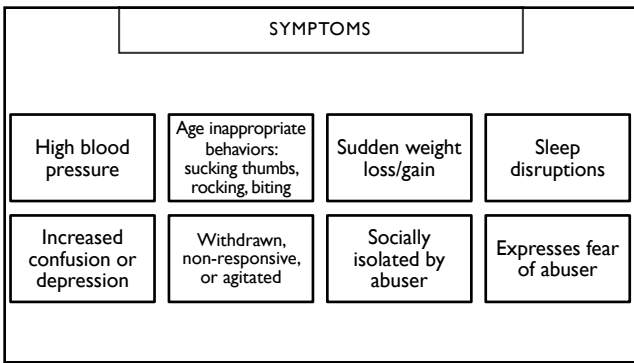
- **83%** of victims of elder sexual abuse reside in an institutional care center, such as a nursing home.
- **17%** occurred in either the elder's own home or in the perpetrators home.
- **80%** of the time, the perpetrator of was the caregiver to the elder.

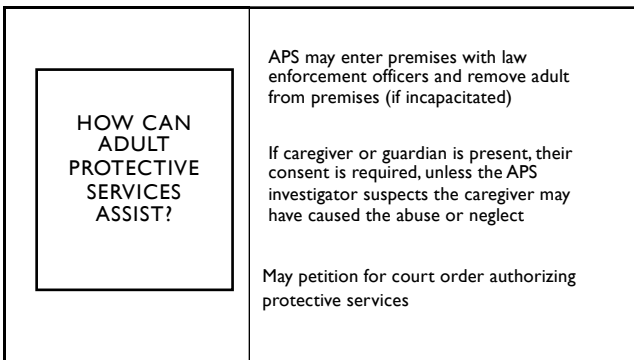
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;">BARRIERS</div>	Medical responders not trained to evaluate sexual assault in elderly victims
	Bruises often attributed to the aging process rather than assault
	Genital injury often attributed to "botched catheterization" or "rough perineal care".
	Memory impairment and dementia
	Inability to communicate
Investigators not trained to communicate with the elderly	

<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;">CONFINEMENT</div>	<p><i>Restraining or isolating an older adult, other than for medical reasons.</i></p>
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<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;">SYMPTOMS</div>	Abrasions on wrist, ankles, chest or torso _____
	Bedsores _____
	Poor Hygiene _____
	Feces and Urine soaked, soiled _____







<div style="border: 1px solid black; padding: 5px; display: inline-block;">FINANCIAL EXPLOITATION</div>	

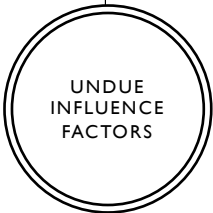
	<p>§ 63.2-1605 MANDATING APS REPORTS TO LAW ENFORCEMENT: A CHANGE</p>	<p>C. The local department . . . shall immediately refer the matter and all relevant documentation to the local law-enforcement agency . . . , upon receipt of an initial report pursuant to § 63.2-1606 involving any of the following . . . :</p> <ul style="list-style-type: none"> • 4. Suspected financial exploitation of an adult • <i>Was suspected financial exploitation of an adult in which financial losses to the adult resulting from the exploitation are suspected to be greater than \$50,000 (until July 1, 2017)</i>
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	<p>FORMS OF FINANCIAL EXPLOITATION</p>	<ul style="list-style-type: none"> • Larceny <ul style="list-style-type: none"> • - Taking of property • - Identity Theft • - Credit card offenses • Force – Robbery/Extortion • False Pretenses – Deceit - Fraud - Scams • Embezzlement – Breach of Trust - POA • Undue influence
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	<p>WHAT IS UNDUE INFLUENCE?</p>	<ul style="list-style-type: none">• Method used by perpetrator to obtain false or forced "consent" from victim in order to commit crime of theft.• Substitution of perpetrator's will for the true desires of victim – similar to brainwashing.• Victim consents to transactions based on what perpetrator wants – not in victim's best interest.• Includes fraud, duress, threats, or other deceptions
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<p>UNDUE INFLUENCE (CIVIL CONTEXT)</p>	<p>Undue influence is any abuse of a close or professional relationship by any means that overcomes the free will of another person and induces him to do what he otherwise would not have done. If a party entered into a contract as a result of undue influence, then the contract cannot be enforced against him.</p> <p>(Virginia Model Jury Instructions, No. 45.460)</p>
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<p>WHAT DO WE DO???</p>	<p>Not in Virginia Criminal Codes</p> <p>Not in Virginia Criminal Case Law</p>
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 <p>UNDUE INFLUENCE FACTORS</p>	<ul style="list-style-type: none"> • How long is the relationship? • Does the victim depend on the suspect? • What is the victim's prior spending pattern? • What is the victim's prior giving history? • Is there an escalating pattern of time? • Criminal charges require – proving statements were fraudulent (False Pretenses) or knowingly taking advantage of lack of mental capacity
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<div style="border: 1px solid black; padding: 2px; display: inline-block;">RELEVANT VIRGINIA CODES</div>	
<ul style="list-style-type: none"> • Larceny (18.2-95 et seq.) • Embezzlement (18.2-111) • Forging / Uttering (18.2-172) • False Pretenses (18.2-178) • Financial Exploitation of Mentally Incapacitated Adults (18.2-178.1) • ID Theft (18.2-186.3) • Credit Card Offenses (18.2-192 et seq.) 	<ul style="list-style-type: none"> • Abduction with intent to extort money (18.2-48) • Extortion (18.2-59) • Burglary (18.2-91, et seq.) • Robbery (18.2-58) • State Tax Code violations • Construction Fraud (18.2-200.1) • Contracting without a license (54.1-111)

<p>§ 18.2-178.1 FINANCIAL EXPLOITATION OF MENTALLY INCAPACITATED PERSONS</p>	<p>A. It is unlawful for any person who knows or should know that another person suffers from mental incapacity to, through the use of that other person's mental incapacity, take, obtain, or convert money or other thing of value belonging to that other person with the intent to permanently deprive him thereof. Any person who violates this section shall be deemed guilty of larceny. (For offenses after July 1, 2013)</p>
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<p>§18.2-178.1 FINANCIAL EXPLOITATION</p>	<p>Does not require that defendant be responsible for care of victim</p> <hr/> <p>Mental incapacity only (does not include physical incapacity)</p>
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<p>§ 18.2-178.1</p>	<p>Elements:</p> <ol style="list-style-type: none">1. Mental incapacity2. Knowledge<ul style="list-style-type: none">• <i>Knew or should have known</i>3. Use of mental incapacity to take, obtain, or convert4. Intent to permanently deprive
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<p>§ 18.2-178.1</p>	<p>D. As used in this section, "<i>mental incapacity</i>" means that condition of a person existing at the time of the offense described in subsection A that prevents him from understanding the nature or consequences of the transaction or disposition of money or other thing of value involved in such offense.</p>
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<div style="border: 1px solid black; padding: 2px; display: inline-block;">§ 18.2-178.1</div>	<p>B. Venue for the trial of an accused charged with a violation of this section shall be in any county or city in which (i) any act was performed in furtherance of the offense or (ii) the accused resided at the time of the offense.</p>
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<div style="border: 1px solid black; padding: 2px; display: inline-block;">§ 18.2-178.1</div>	<p>C. This section shall not apply to a transaction or disposition of money or other thing of value in which the accused acted for the benefit of the person with mental incapacity or made a good faith effort to assist such person with the management of his money or other thing of value.</p>
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<div style="border: 1px solid black; border-radius: 5px; padding: 2px; display: inline-block;">Power of Attorney</div>	<ul style="list-style-type: none"> • An instrument which delegates to another person authority to make health care and/or financial decisions
<div style="border: 1px solid black; border-radius: 5px; padding: 2px; display: inline-block;">Guardianship</div>	<ul style="list-style-type: none"> • A court order granting certain powers to a family member, other individual, governmental agency, or institution to control the affairs of another person

	<p>CRIMINAL MISUSE</p>	<ul style="list-style-type: none"> • Just because a POA or guardianship was used does not make it a civil matter only • POAs only allows one to act on behalf of grantor and as grantor would have done • Virginia applies the “prudent investor” rule • Key question – was the money spent to benefit the victim? (gifts?)
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	<p>STANDARD OF CARE AND DUTY OF LOYALTY</p>	<p>§ 26-45.4. Standard of care --A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.</p> <p>§ 26-45.7. Loyalty and impartiality. — A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.</p>
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	<p>SYMPTOMS</p>	<ul style="list-style-type: none"> • Lonely • Isolated • Unemployed Family • Unfamiliar with financial matters or practices • Diagnosed with one or more disabilities • Wealthy Individuals who are suddenly dependent on others • Electronic withdrawals they could not have made • Unpaid bills and foreclosures
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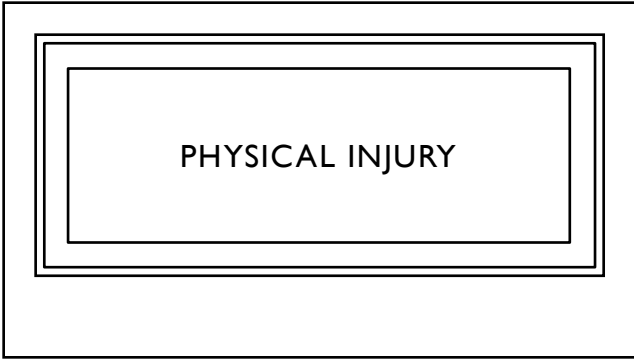
WHO ARE THE SUSPECTS?

- 60% of time it is a family member:
- Children
- Grand Children
- Siblings

(National Council on Aging)


TRAUMA INFORMED INTERVIEW AND ELDERLY VICTIMS

LACK OF CONTROL






<p>HIGH STRESS / TRAUMA</p>	<p>Primitive / Reptilian Brain takes control</p> <p>Pre-Frontal Cortex is turned OFF</p> <p>CANNOT</p> <ul style="list-style-type: none">• Remember Morals/Values• Control Attention• Think Logically• Override Reflexes or Habits
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<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>DEMENTIA</p> </div> <p><i>The damaged nerve cells in the hippocampus mean this part of the brain can't function properly, which can lead to the early symptoms of Alzheimer's – memory loss and disorientation.</i></p>	<div style="border: 3px double black; padding: 10px; width: 100px; height: 100px; margin: 0 auto;">  </div>
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<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>THEN WE ADD TRAUMA...</p> </div>	<p><u>No Who, What, When, Where, How and Why!!</u></p> <p>They have difficulty finding the right words</p> <ul style="list-style-type: none"> • Using familiar words repeatedly • Losing train of thought • Speaking less • Relying on gestures
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<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>TRAUMA INTERVIEW OF ELDERLY</p> </div>	<p>Speak directly to the person rather than to his or her caregiver or companion.</p> <p>Take time to listen to the person express his or her thoughts, feelings and needs.</p> <p>Give the person time to respond. Don't interrupt unless help is requested.</p> <p>Ask what the person is still comfortable doing and what he or she may need help with.</p> <p>Its OK to laugh. Humor lightens the mood and makes communication easier.</p>
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 <p>INTERVIEW</p>	<ul style="list-style-type: none"> • Short, simple sentences; • “Mrs. Smith, is your arm hurt?” • “Mrs. Smith can you tell me about those bruises?” • “Tell me more about how that happened” • “What can you remember about these marks?” <p>Now fold in sights, sounds, smells, touches as they start to talk about it. Activate the sensory memories.</p>
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<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> MULTI-DISCIPLINARY INVESTIGATION </div>	<p>Law Enforcement</p> <p>Adult Protective Services</p> <p>Medical Experts</p> <p>Advocates</p>
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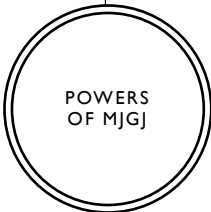
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> VICTIM ADVOCATES </div>	<p>Assist • Assist with referrals to social service agencies</p> <p>Follow • Follow-up to make sure referrals where acted upon, "Doesn't fall through cracks"</p> <p>Help • Help victim with a safety plan</p> <p>Advise • Advise police of any additional on-going concerns for victims safety</p> <p>Work • Work with hospital social workers for safe discharge plans for the victim</p>
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<p>MEDICAL PROFESSIONALS</p>	<p>M.E. and Doctors may not agree!</p> <p>Establish a relationship with a Doctor that treats and understands the complexities of aging and elderly health care.</p>
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<p>PROSECUTOR</p>	<hr/> <p>Must be involved from the initial call in serious cases</p> <hr/> <p>Provide law enforcement with strategic guidance on the case</p> <hr/> <p>Liaison with medical professional as to wound interpretation and causes</p> <hr/> <p>Attend autopsy if a death case</p>
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<p>TOOLS</p>	<p>Multi-Jurisdictional Grand Juries</p> <p>Bank Records</p> <p>Pharmacy Records</p>
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<p>MULTI- JURISDICTIONAL GRAND JURIES</p>	<p>§ 19.2-215.1</p> <hr/> <p>Jurisdiction of MJGJ:</p> <ul style="list-style-type: none"> • To investigate any condition that involves or tends to promote criminal violations of: <ul style="list-style-type: none"> • Abduction / Kidnapping [§§ 18.2-47 & 48] • Embezzlement [§ 18.2-111] • Extortion [§§ 18.2-59 et seq.] • Computer Crimes [§§ 18.2-152.1 et seq.] • Homicide [§§ 18.2-30 et seq.] • Identity Theft [§§ 18.2-186 et seq.] • Credit Card Offenses [§§ 18.2-191 et seq.] • Felony Sex Offenses [§§ 18.2-61 et seq.]
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 <p>POWERS OF MJGJ</p>	<p>§ 19.2-215.5</p> <p>“A multi-jurisdiction grand jury has statewide subpoena power and may subpoena persons to appear before it to testify or to produce evidence in the form of specified records, papers, documents or other tangible things.”</p>
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 <p>BANK AND CREDIT CARD RECORDS</p>	<p>§ 19.2-10.1</p> <p>Gives courts the power to order bank and credit card records, <i>ex parte</i>, without notice to bank or credit card customer and under temporary seal.</p> <p>Do not need pending charge – just an investigation</p>
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RESOURCES


- APS
- Elder Abuse and Neglect Squad in the Medicaid Fraud Control Unit of the Attorney General's Office

Extra resources for facility cases:

- Ombudsman
- State Regulatory & Licensing Agencies
- Medicaid Fraud Control Unit (MFCU)

VIRGINIA TRIAD
RESOURCES

- Triad is a cooperative effort of law enforcement agencies (police/fire/sheriffs), senior citizens, and senior organizations, focused on reducing crimes against seniors.
- To find out if your area has or is considering forming a Triad, contact your local sheriff or police or email the Director of Programs and Community Outreach at seniors@oag.state.va.us



COMMUNITY
RESOURCES

- Advocacy organizations
- Aging network agencies
- Culturally-specific organizations
- Elderly legal resources
- Faith-based organizations
- Government agencies
