

CONFRONTING ELDER ABUSE, NEGLECT, AND EXPLOITATION: THE NEED FOR ELDER JUSTICE LEGISLATION

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It is the right of every individual to be free from abuse, neglect, and exploitation. Despite this fact, elder abuse continues to be an enormous problem in America. Congressional hearings on elder abuse have declared it a national disgrace; however, little governmental action has been conducted to confront this problem. Currently, there are too few resources and systems in place to reduce or eliminate elder abuse. Senators John Breaux and Orrin Hatch, both members of the U.S. Senate Special Committee on Aging, discuss the strong need for elder justice legislation to fight this devastating problem. Their proposed legislation would create proper research, resources, and structures that will ensure detection, treatment and elimination of elder abuse in the United States.

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The authors wish to extend a special note of appreciation to the following individuals who contributed to the development of this article and the Elder Justice Act: Cecil Swamidoss, Lauren Fuller, Marie-Therese Connolly, Michelle Easton, Janet Forlini, Philip Thevenet, Scott Mulhauser, Ryan McGinn, Joy Cameron, Matt LaVigna, Arika Pierce, Dana Dupre, Patricia Hameister, Wan Kim, Makan Delrahim, Rebecca Seidel, Becky Shipp, Patricia DeLoatche, and Kevin O'Scannlain.

I. Introduction

Nearly a quarter century has passed since the first congressional hearings on elder abuse declared it to be a national disgrace. However, congressional action remains elusive, and not one single federal employee works full-time on elder abuse, neglect, and exploitation issues. From a policy perspective, elder justice means assuring that adequate public-private infrastructure and resources exist to prevent, detect, treat, understand, intervene, and, where appropriate, prosecute elder abuse, neglect, and exploitation. From an individual perspective, elder justice is the right of every older American to be free of abuse, neglect, and exploitation.

There are between 500,000 and 5,000,000 seniors who are abused in this country every year. Despite the dearth of data, experts agree that we have only seen the tip of the iceberg. Eighty-four percent of all cases are never reported. What we do know is that abuse and neglect shorten the victim's life. Abuse and neglect often trigger a downward spiral, which tips over an otherwise productive, self-sufficient older person's life. There are three main types of elder abuse: (i) abuse and neglect in homes and domestic settings; (ii) abuse and neglect in institutions and other types of residential care; and (iii) financial fraud and exploitation.

Other family violence issues, such as domestic violence and child abuse, have taught us that abuse, neglect, and exploitation require a multifaceted solution, including public health, social service, and law enforcement approaches. But while these other types of abuse have been recognized and receive sizable federal funding, elder abuse remains underresearched, underreported, and underfunded. Congress must act now to provide federal leadership to those on the front lines who are fighting elder abuse with scarce resources and fragmented systems.

II. Highlights of the Elder Justice Proposal

A. **Creating Federal Leadership and Resources to Assist Families, Communities, and States in the Fight Against Elder Abuse, Neglect, and Exploitation**

Dual Offices of Elder Justice are established at the Departments of Health and Human Services (in the Administration on Aging) and Justice (in the Office of Justice Programs). These offices will serve

programmatic, grant-making, policy development, and technical assistance functions relating to efforts to address all types of elder abuse, neglect, and exploitation. Positions in the leadership offices of both agencies will be funded to assure high-level attention and agencywide coordination. A federal home and more consistent funding for Adult Protective Services (APS) is also established.

Given the myriad entities and issues implicated by elder abuse, coordination at all levels is critical. A public-private Elder Justice Coordinating Council will manage activities of the Departments of Justice (DOJ) and Health and Human Services (HHS), other relevant federal agencies, states, communities, and private and not-for-profit entities. Funding also would go to states to create their own coordinating bodies if they do not already exist and to send delegations to an annual Summit of the Elder Justice Coordinating Council.

B. Implementing Successful Strategies for Preventing and Combating Elder Abuse, Neglect, and Exploitation

1. BETTER INFORMATION FOR CONSUMERS AND OTHERS

An Elder Justice Resource Center will provide information for consumers, providers, advocates, researchers, policy-makers, regulators, and law enforcement to learn about preventing and addressing elder abuse, neglect, or exploitation. The first-ever “National Elder Justice Library” of training, technical assistance, and promising practices will prevent “re-inventing the wheel.” This legislation will provide for a centralized data repository, which is critical to getting a handle on the nature and dimensions of elder abuse.

2. BUILDING A KNOWLEDGE BASE AND FUNDING PROMISING PROJECTS

Elder abuse has been virtually absent from the research agenda in this country. Developing policies to combat elder abuse on proven success is smart government. Five “Centers of Excellence” will develop expertise, research, clinical practices, training, and dissemination of information relating to elder abuse. Research priorities include: a national incidence and prevalence study; jump-starting intervention research; identifying community strategies to make elders safer; and examining and funding multidisciplinary efforts.

3. DEVELOPING FORENSIC CAPACITY

It is imperative that we be able to identify the signs of abuse and neglect, but currently no data exist to assist in detection. Mobile and stationary forensic centers will develop expertise and enhance the capacity to detect elder abuse. Funding will be provided to train health professionals in *both* forensic pathology and geriatrics.

4. VICTIM ADVOCACY, "SAFE HAVENS," AND SUPPORT FOR AT-RISK ELDERS

Grants to five diverse communities will test what elder "safe havens" are needed when seniors are not safe where they live. In addition, efforts to better identify and meet the special needs of older victims, including funding victim advocates, will be supported. Legal advocates, volunteers, faith-based organizations, and not-for-profit entities will support at-risk seniors in the fight against elder abuse. A study will clarify the roles, responsibilities, and needs of APS, long-term care ombudsmen, and other entities in protecting the elderly as well as identify barriers to success.

5. ENHANCING THE LAW ENFORCEMENT RESPONSE

Among the most significant impediments to pursuing elder abuse cases, especially those involving neglect, is lack of expertise in recognizing and investigating violations. The bill provides assistance for local, state, and federal prosecutors and funding for technical training, investigation, and victim assistance for cases involving elder justice. Efforts to enhance the role of community policing in protecting at-risk elders will be supported.

6. TRAINING

Training to combat elder abuse, neglect, and exploitation is supported within disciplines and in multidisciplinary settings.

7. MEETING THE NEEDS OF UNDERSERVED POPULATIONS: RURAL, MINORITY, AND INDIAN SENIORS

Special programs are included to identify and address the needs of underserved seniors.

8. MODEL STATE LAWS AND PRACTICES

A study will review state practices and laws regarding: (1) definitions of elder abuse, neglect, and exploitation; (2) mandatory report-

ing laws; (3) evidentiary rules (including televised testimony); (4) laws requiring immediate reporting of all nursing home deaths to the county; (5) guardianship; and (6) banking practices. Recommendations will be made to assist Congress in determining any need for future legislation based on successful state practices.

C. Increasing Security, Collaboration, and Consumer Information in Long-Term Care

1. SECURITY MEASURES

Proposals for increasing security include: (1) immediate reporting to law enforcement of crimes victimizing residents; (2) FBI national criminal background checks for all employees and contractors of federally funded long-term providers; (3) sixty-day advance notice of nursing facility closures and assurance of the proper relocation of all residents; and (4) a new federal cause of action permitting the DOJ to pursue criminal and civil cases where abuse or neglect results in serious harm.

2. ENHANCING STAFFING

Recognizing that staffing is critical in preventing abuse and neglect, enhancement measures include: (1) grants and tax incentives to bolster recruitment; (2) loan forgiveness, tax incentives, and bonuses for long-term care workers who remain in the field for more than five years; (3) subsidized continuing training and development of career ladders with accompanying wage increases or benefit packages; and (4) training and technical assistance to create and institute management practices that reduce turnover rates.

3. HELPING CONSUMERS

A Long-Term Care Consumer Clearinghouse will assist the millions of American families trying to navigate options in long-term care. An Institute of Medicine study of long-term care options will provide much-needed information on how different types of facilities are defined, the level of services they offer, criteria for admission and discharge, elements included in the price and standards of care, and oversight and enforcement provisions.

4. PROMOTING COLLABORATION

Funding will assist representatives of the various sectors of the long-term care community (nursing home administrators, consumer advocates, local law enforcement, and others) to work together on improvement efforts.

D. Evaluation—Determining What Works

Given the dearth of data, it is vital to build a knowledge base and begin a coherent assessment of which efforts are worth replicating. In keeping with this philosophy, funded projects must include a validated evaluation component designed to measure efficacy. In addition, grants will evaluate other ongoing or new elder abuse, neglect, and exploitation efforts.

III. Discussion

Elderly Americans are mistreated every day in every part of the country, yet it is often undetected and unreported.¹ Initial studies on the prevalence of elder abuse vary greatly. It is estimated that anywhere between 500,000 and 5,000,000 older Americans are abused every year.² Researchers have also concluded that as much as eighty-four percent of elder abuse cases may go unreported.³

Victims of elder abuse are not only subject to injury from mistreatment, they also face a significant increase in their chances of dying prematurely. According to a study published in the *Journal of the American Medical Association*, older adults who were mistreated were 3.1 times at greater risk of dying within the next decade than those of the same age with no reported mistreatment.⁴

The federal government has been slow to respond to the needs of elder abuse victims. For more than twenty years, Congress has been told about the need for a coordinated federal effort to combat elder abuse.⁵ Congress has held hearings and issued reports.⁶ But

1. See generally SELECT HOUSE COMM. ON AGING, 97TH CONG., ELDER ABUSE (AN EXAMINATION OF A HIDDEN PROBLEM) (Comm. Print 1981) [hereinafter HIDDEN PROBLEM].

2. THE NAT'L CTR. ON ELDER ABUSE, THE NATIONAL ELDER ABUSE INCIDENCE STUDY 5-1 to 5-2 (1998) [hereinafter NEAIS].

3. *Id.*

4. Mark S. Lachs et al., *The Mortality of Elder Mistreatment*, 280 JAMA 428, 430-31 (Aug. 1998).

5. S. 2933, 107th Cong. § 2 (2001).

still, in the year 2003, most experts agree that the federal effort against elder abuse is decades behind the work addressing child abuse and domestic violence.

A. Congressional History

Congressional interest in elder abuse dates back more than two decades.⁷ In June 1980, the U.S. Senate and House Committees on Aging held joint hearings on the topic of elder abuse.⁸ Numerous witnesses described both individual cases of abuse and statistical information about large scale trends.⁹

An April 1981 report from the House Select Committee on Aging estimated that four percent of adults over age sixty-five, or one million seniors nationwide, were victims of abuse.¹⁰ The report, entitled *Elder Abuse (An Examination of a Hidden Problem)*, noted that the total number of abused elders in the United States was nearly equal to the entire nation's nursing home population at the time.¹¹ The report compared statistical evidence of the prevalence of elder abuse in existence at the time with that of child abuse and suggested that protective services for elders should receive between twenty-five percent to forty percent of total funding allocated by the states for protective services.¹² Instead, the Committee reported that states were spending only 6.6% of protective services monies on senior citizens.¹³ The Committee called this a "serious and unjustified imbalance."¹⁴

The report contained recommendations for federal government action that are hauntingly familiar to the suggestions of elder advocates today. The main recommendation was for federal assistance to the states in the form of a Federal Elder Abuse Act patterned after the 1974 Child Abuse Prevention and Treatment Act.¹⁵ The Prevention, Identification and Treatment of Elder Abuse Act of 1981 was introduced for this purpose.¹⁶ The bill would have encouraged states to

6. *Id.*

7. *Id.*

8. See HIDDEN PROBLEM, *supra* note 1.

9. *Id.* at XIII–XVII.

10. *Id.* at XIV–XV.

11. See generally *id.*

12. See generally *id.*

13. *Id.* at 72.

14. *Id.* at 123.

15. *Id.* at 125.

16. *Id.*

make statutory and administrative changes to reach federal minimum standards by making federal funding contingent on such changes. Unfortunately, it was not passed into law.

In May of 1985, a report entitled *Elder Abuse: A National Disgrace* was issued by Representative Claude Pepper, then Chairman of the Subcommittee on Health and Long-Term Care of the U.S. House Select Committee on Aging.¹⁷ The report echoed the recommendation of the 1981 study and called for federal government assistance to the states to combat elder abuse using the 1974 Federal Child Abuse Law as a model.¹⁸ The Subcommittee estimated that one out of every twenty-five older Americans, or more than 1.1 million persons, were subject to abuse each year.¹⁹ In addition, the report concluded that about one in five cases were reported to adult protective services agencies compared to an average of one in six cases prior to 1981.²⁰ Finally, the report compared the amount of spending by states in 1984 for the protection of elders with the amount spent for the protection of children.²¹ The Subcommittee found that states spent \$22.14 per child resident for child protective services versus \$2.91 per older resident for elderly protective services.²²

Five years later, in 1990, the Subcommittee on Health and Long-Term Care of the House Select Committee on Aging issued another report entitled *Elder Abuse: A Decade of Shame and Inaction*.²³ The report recounted the history of legislative attempts to pass a comprehensive federal law to address elder abuse.²⁴ Once again, reference was made to the successful 1974 effort to combat child abuse and the need to follow suit to protect vulnerable seniors.²⁵ The report described how states spent about \$45.03 per child resident for child protective services in 1989 yet only \$3.80 was spent per elderly resident for adult protective services.²⁶

17. SELECT HOUSE COMM. ON AGING, 99TH CONG., *ELDER ABUSE: A NATIONAL DISGRACE* (Comm. Print 1985).

18. *Id.* at 47.

19. *Id.* at 3.

20. *Id.* at 4.

21. *Id.* at 35.

22. *Id.*

23. SELECT HOUSE COMM. ON AGING, 102D CONG., *ELDER ABUSE: A DECADE OF INACTION* (Comm. Print 1990).

24. *Id.* at X.

25. *Id.* at 37.

26. *Id.* at 48.

The policy recommendations section from the 1990 report sums up the federal response to elder abuse during the 1980s:

Regrettably, due to the lack of Federal progress made, the basic recommendation of this report remains essentially unchanged from that made in the Aging Committee's landmark 1981 report on elder abuse: that there needs to be a coordinated national effort to confront the issue of elder abuse and that the Federal Government should better assist the States in their efforts to deal with this pervasive problem.²⁷

The report went on to note that “[f]ederal programs to combat elder abuse and provide adult protective services had gone unfunded or significantly underfunded.”²⁸ One program specifically mentioned was the Long-term Care Ombudsman Program, which was designed to assist residents of nursing homes and board and care homes, including the resolution of complaints of abuse, neglect, and exploitation.²⁹ The report noted that Congress felt that twenty million dollars annually was needed to properly fund the program in 1990, while less than one million dollars had actually been appropriated for the ombudsman program in each of the preceding three years.³⁰

The 1990 report also documented cuts in Social Services Block Grant (SSBG) funding of adult protective services and pointed out that SSBG funds served as the major source of federal funds for these services in the states. It was noted that SSBG does not adequately earmark funds specifically to be spent for adult protective services. As a result, the report recommended establishing a national elder abuse program which would include direct grants to the states solely for the purpose of elder abuse prevention programs.

A year later in July 1991, the Subcommittee issued another report entitled *Protecting America's Abused Elderly: The Need for Congressional Action*.³¹ The study focused on institutional abuse in nursing, board, and care homes and the role of the Long-term Care Ombudsman Program. The recommendations included yet another mention of successful federal efforts to address child abuse and the need for similar legislation to fight elder abuse. The report further recommended increased funding for: ombudsman programs, a program to

27. *Id.* at 71.

28. *Id.*

29. *Id.*

30. *Id.*

31. SELECT HOUSE COMM. ON AGING, 102D CONG., *PROTECTING AMERICA'S ABUSED ELDERLY: THE NEED FOR CONGRESSIONAL ACTION* (Comm. Print 1991) [hereinafter *NEED FOR ACTION*].

establish temporary emergency shelters for abused elderly and adults, guardianship reform, legal services for abused elders, and use of Medicaid Fraud Control Units to investigate and prosecute abuse in nursing homes and board and care homes.

Hearings on the issue of elder abuse continued throughout the 1990s.³² In 1991, the Senate Special Committee on Aging conducted field hearings in Alabama and Louisiana to highlight regional concerns on elder abuse.³³ In 1992, the Committee published an information paper assessing federal and state laws addressing prevention, identification, and criminal prosecution of elder abuse.³⁴ In addition, public policy roundtable discussions were held. At the time of the passage of the Violence Against Women Act,³⁵ the Committee studied violence against midlife and older women in a hearing.³⁶ In 1995, the Committee held another field hearing in Maine on this troubling issue.³⁷

Since its inception, the Senate Special Committee on Aging has taken the issue of elder abuse seriously. In particular, the Committee has struggled with elder abuse in institutional settings.³⁸ Beginning in 1963, Senator Frank Moss initiated investigations that would eventually culminate in a twelve volume report entitled *Nursing Home Care in the United States: Failure in Public Policy* and a series of thirty hearings between 1969 and 1974.³⁹ Unfortunately, the issues were still not resolved. Although Senator Moss exposed egregious deficiencies in

32. See, e.g., *Older Americans Act: Elder Abuse: Hearing Before the House Subcomm. on Aging of the House Comm. on Health, Educ., Labor, & Pensions*, 106th Cong. (1999); *Society's Secret Shame: Elder Abuse and Family Violence: Hearing Before S. Spec. Comm. on Aging*, 102d Cong. (1995) [hereinafter *Secret Shame*]; *Elder Abuse and Neglect: Prevention and Intervention: Hearing Before the S. Spec. Comm. on Aging*, 102d Cong. (1991) [hereinafter *Prevention & Intervention*]; *Crimes Committed Against the Elderly: Hearing Before the S. Spec. Comm. on Aging*, 102d Cong. (1991) [hereinafter *Crimes Committed*].

33. *Prevention & Intervention*, *supra* note 32; *Crimes Committed*, *supra* note 32.

34. SENATE SPEC. COMM. ON AGING, 102D CONG., AN ADVOCATE'S GUIDE TO LAWS AND PROGRAMS ADDRESSING ELDER ABUSE *passim* (1991).

35. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 18 U.S.C. and 42 U.S.C.).

36. SENATE SPEC. COMM. ON AGING, 103D CONG., ELDER ABUSE AND VIOLENCE AGAINST MIDLIFE AND OLDER WOMEN: ROUNDTABLE DISCUSSION (1994).

37. *Secret Shame*, *supra* note 32.

38. See, e.g., NEED FOR ACTION, *supra* note 31, at 5.

39. SUBCOMM. ON LONG-TERM CARE & SPEC. COMM. ON AGING, NURSING HOME CARE IN THE UNITED STATES: FAILURES IN PUBLIC POLICY, S. DOC. NO. 93-1420 (1974).

nursing homes, the problems continued.⁴⁰ Some twenty years later, Senators Breaux and Grassley held hearings on California nursing homes at which time the General Accounting Office (GAO) revealed that significant abuse continues.⁴¹ The GAO reported that thirty percent of California's nursing homes potentially could cause serious harm or death to their residents.⁴² The GAO intimated that this number might be extrapolated to the entire nation.⁴³ Based on these astonishing findings, the Committee embarked upon another nursing home oversight project.⁴⁴ A series of hearings has exposed many complex issues that are slowly being addressed by the government, law enforcement, advocacy groups, and the nursing home industry.

In more recent years, the Senate Special Committee on Aging has held a series of hearings to expose a wide variety of ways in which our nation's seniors are abused and defrauded.⁴⁵ The Committee has looked at a number of issues in the past five years including: criminal background checks for caregivers; "equity predators" providing the elderly with sub-prime loans; issues surrounding fraud and abuse within digital commerce; consumer fraud relating to the funeral and dietary supplement industries; living trust scams which fleece the elderly of their assets and estates; physical and sexual abuse in nursing homes; and preventing elder abuse, neglect, and exploitation in general.⁴⁶

B. Scope of Elder Abuse

1. DOMESTIC ELDER ABUSE

It has been very difficult to accurately determine how many older Americans are victims of elder abuse, in its various manifesta-

40. *See generally id.*

41. *See* U.S. GEN. ACCOUNTING OFFICE, GAO/T-HEHS-98-219 CALIFORNIA NURSING HOMES: FEDERAL AND STATE OVERSIGHT INADEQUATE TO PROTECT RESIDENTS IN HOMES WITH SERIOUS CARE VIOLATIONS, at 5 (1998) [hereinafter OVERSIGHT INADEQUATE].

42. *Id.*

43. *Id.*

44. U.S. GEN. ACCOUNTING OFFICE, GAO-02-312 NURSING HOMES: MORE CAN BE DONE TO PROTECT RESIDENTS FROM ABUSE (2002) [hereinafter MORE CAN BE DONE].

45. *See Safeguarding Our Seniors: Protecting the Elderly from Physical and Sexual Abuse in Nursing Homes: Hearing Before the S. Spec. Comm. on Aging, 107th Cong. (2002)* [hereinafter *Safeguarding Our Seniors*].

46. *See, e.g., id.*

tions. There is no national uniform reporting system comparable to the Long-term Care Ombudsman Program's and no uniform definitions of abuse and neglect terms.

The most definitive study of elder abuse in the United States is the National Elder Abuse Incidence Study (NEAIS), released in September 1998.⁴⁷ The congressionally mandated study was also a joint project of the Administration for Children and Families and the Administration on Aging and was conducted by the National Center on Elder Abuse in collaboration with Westat, Inc.⁴⁸

In 1996, according to the study, 449,924 persons aged sixty and over experienced abuse and/or neglect in domestic settings (i.e., at home).⁴⁹ Of this number, 70,942 (16%) were reported to, and substantiated by, APS agencies; the remaining 378,982 (84%) were not.⁵⁰ The study estimated that new unreported incidents of abuse and neglect were five times more prevalent than reported and substantiated incidents.⁵¹

The measurement of these unreported cases describes what is known as the iceberg theory of elder abuse, which refers to the large number of cases of elder abuse that go unreported to the APS system throughout the country.⁵² In addition, NEAIS researchers also acknowledged that the study could not identify and report all hidden domestic abuse and neglect and that a submerged "core" of abuse and neglect remains unidentified and unreported.⁵³

The NEAIS gathered data on domestic elder abuse, neglect, and self-neglect through a nationally representative sample of twenty counties in fifteen states.⁵⁴ For each county sampled, the study collected data from two sources: reports from the local APS agency and reports from approximately 1,100 sentinels, who are trained individuals in a variety of community agencies which have frequent contact with the elderly.⁵⁵ Many sentinels were voluntary or mandatory reporters of elder abuse as defined by state laws. They included professionals and nonprofessionals from law enforcement agencies, hospi-

47. NEAIS, *supra* note 2.

48. *Id.*

49. *Id.* at 4-3.

50. *Id.*

51. *Id.*

52. *Id.* at 2-3.

53. *Id.*

54. *Id.* at 1-1.

55. *Id.*

tals, financial institutions, and traditional elder care providers such as adult day care and senior centers, and home health agencies.⁵⁶ The sentinel approach to collecting data is an alternative to more costly general population surveys and has been used in National Incidence Child Abuse studies commissioned by the federal government.⁵⁷

The study discussed how elder abuse is more difficult to detect than child abuse because the social isolation of some of the elderly may increase both the risk of abuse and neglect while decreasing the possibility of detection by outsiders.⁵⁸ Approximately one quarter of our nation's elderly live alone and many others interact primarily with family and see few outsiders.⁵⁹ In comparison, children never live alone and are legally required to attend school from age five to sixteen.⁶⁰ Consequently, many children come into contact with an institution outside of the home almost daily for most of their childhood. The NEAIS noted how even sentinels that work with the elderly cannot conclusively account for home-bound abuse and neglect victims who seldom come in contact with others.⁶¹

Relatives or spouses of the victims commit most domestic elder abuse according to reports supplied by both APS and sentinels.⁶² Approximately ninety percent of alleged abusers were related to victims.⁶³ Those eighty years-of-age and older, comprising ninety percent of the U.S. elderly population in 1996, accounted for 51.8% of reports of neglect, forty-eight percent of financial/material abuse, 43.7% of physical abuse, and 41.3% of emotional/psychological abuse.⁶⁴ Elderly women were more likely to be the victims of all categories of abuse, except for abandonment.⁶⁵ Finally, those who were unable to care for themselves accounted for approximately one-half, 47.9%, of the substantiated incidents of elder abuse.⁶⁶

The NEAIS estimated that, in 1996, 551,011 elderly persons aged sixty and over experienced abuse, neglect, and/or self-neglect.⁶⁷ Of

56. *Id.* at 1-2.

57. *Id.* at 1-1.

58. *Id.* at 5-3.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 4-28.

63. *Id.* at fig.4-9.

64. *Id.* at 4-13 fig.4-3.

65. *Id.* at 4-17 fig.4-4.

66. *Id.* at 4-20.

67. *Id.* at 4-2 tbl.4-1.

this total, 115,110 (21%) were reported to and substantiated by APS agencies, while the remaining 435,901 (79%) were not reported to APS agencies.⁶⁸

Total reports to APS agencies have risen dramatically over the past fifteen years.⁶⁹ The total number of incidents reported increased 150% from 117,000 in 1986 to 293,000 in 1996.⁷⁰ According to a March 2000 survey by the National Association of Adult Protective Services Administrators, agencies nationwide reported receiving a total of 470,709 complaints in the previous year, with 160,751 validated as cases of elder abuse or neglect.⁷¹ Thus, the number of validated cases increased dramatically in only a four-year span (1996–2000), from 115,110⁷² to 160,751.⁷³

2. INSTITUTIONAL ELDER ABUSE

Accurate statistics for institutional elder abuse are also difficult to obtain. The Long-term Care Ombudsman Program received a total of 15,010 complaints regarding abuse, gross neglect, and exploitation out of a total of 231,889 complaints received in 2000.⁷⁴ These statistics are suspect due to the wide variance in reported complaints by state. For example, California Ombudsmen reported 2,340 total complaints under this category in 2000, while Louisiana Ombudsmen reported a total of only seven complaints for all types of abuse and neglect in the same year.⁷⁵

As noted earlier, elder abuse in institutional settings has long been an issue of great concern. Congressional investigations date back almost forty years. Egregious problems have been exposed and remain unresolved. The GAO has documented abuse in nursing homes in a series of reports.⁷⁶ Most notable are two recent reports.

68. *Id.* at 4-3.

69. *See id.* at 2-2.

70. *Id.*

71. Am. Soc'y on Aging, *Elder Abuse and Neglect Research Explored at World Congress*, <http://www.asaging.org/at/at-221/ResearchT1.html> (last visited Mar. 17, 2003).

72. NEAIS, *supra* note 2, at 4-3.

73. Am. Soc'y on Aging, *supra* note 71.

74. Admin. on Aging, *2000 National Ombudsman Reporting System Data Tables tbl.B-2*, at <http://www.aoa.gov/ltombudsman/2000nors/> (last visited Mar. 17, 2003).

75. *Id.*

76. *See, e.g.,* OVERSIGHT INADEQUATE, *supra* note 41; *see also* MORE CAN BE DONE, *supra* note 44.

First, in its 1998 report entitled, *California Nursing Homes: Federal and State Oversight Inadequate to Protect Residents in Homes with Serious Care Violations*, the GAO revealed that thirty percent of California's nursing homes could cause serious harm or death to their residents and intimated that this number could potentially be extrapolated to the entire nation.⁷⁷ Equally troubling is the GAO's 2002 report entitled, *Nursing Homes: Many Shortcomings Exist in Efforts to Protect Residents from Abuse*, which found serious under-reporting of abuse in nursing homes.⁷⁸ It further uncovered lengthy delays in abuse reporting, staff inadequately trained to address abuse issues, and lack of oversight on the part of the Centers for Medicare and Medicaid Services.⁷⁹

3. FINANCIAL EXPLOITATION OF THE ELDERLY

There is very little data on how many senior citizens are being financially abused. Yet persons over the age of fifty-five control at least seventy percent of the nation's household net worth.⁸⁰ Accordingly, it is no wonder the elderly are targets of financial crimes. It is estimated that the elderly will control approximately ten trillion dollars in assets within the next ten years. As more and more baby boomers retire, the targeting of the elderly will only increase. The Federal Bureau of Investigation (FBI) does not even have a category in its Uniform Crime Reporting System to monitor elder financial crimes.⁸¹ In addition, most police officers and prosecutors are not trained to spot financial abuse or refuse to investigate it, claiming that it is "a civil matter."⁸²

77. OVERSIGHT INADEQUATE, *supra* note 41, at 5, 15.

78. U.S. GEN. ACCOUNTING OFFICE, GAO-02-4487 NURSING HOMES: MANY SHORTCOMINGS EXIST IN EFFORTS TO PROTECT RESIDENTS FROM ABUSE, (2002).

79. See MORE CAN BE DONE, *supra* note 44, at 4-6.

80. *Kemper Funds Study Reveals Investors over Age 55 Control Nation's Wealth*, SENIOR JOURNAL.COM (Jan. 31, 2003), at <http://www.seniorjournal.com/news/FTR-6-26-00SnrsCntrlw1th.htm>.

81. Nat'l Inst. for Computer Assisted Reporting, *FBI Uniform Crime Reports*, at <http://www.nicar.org/data/fbi> (last visited Mar. 22, 2003). Generally, the only details found in the UCRS regarding victims relate to murder. *Id.* The new National Incidence Based Crime Report (NIBCR) is expected to detail the victim and more, if it is universally implemented. Accordingly, it would be easier to analyze elder crimes.

82. John F. Wasik, *The Fleecing of America's Elderly*, CONSUMERS DIG., Mar.-Apr. 2000, at 77-78.

The National Center on Elder Abuse (NCEA)⁸³ conducted the most extensive study on elder financial abuse in 1998 by sampling incident reports made to state adult protective service agencies.⁸⁴ The NCEA National Elder Abuse Incidence Study found that of 450,000 substantiated reports of all types of elder abuse, approximately forty percent, or 220,400, involved some form of financial abuse.⁸⁵ The report concluded with a conservative estimate that only one out of every five financial abuse cases is reported.⁸⁶ Other interviewed experts believe that there are even more unreported cases.⁸⁷ Therefore, experts estimate that three to five million senior citizens are financially abused each year.⁸⁸

Elder financial abuse ranks third behind neglect and emotional/psychological abuse as the most prevalent form of elder abuse.⁸⁹ In fact, while approximately thirty percent of crimes against the elderly involve financial abuse, only twenty-five percent represent physical abuse.⁹⁰ The remaining forms of abuse are a combination of abandonment, sexual, and other abuses.⁹¹

C. Barriers and Challenges to Addressing Elder Abuse

Perhaps the greatest barrier to addressing elder abuse is the relatively low profile of the issue among the general public, the health care community, and law enforcement compared to other issues such as child abuse and domestic violence. Although both child abuse and

83. NCEA is supported, in part, by a grant, No. 90-AP-2144, from the Administration on Aging, Department of Health and Human Services. It exists to provide elder abuse information to professionals and the public; offer technical assistance and training to elder abuse agencies, adult protective services programs, and related professionals; conduct short-term abuse research; and assist with elder abuse program policy and program development. Nat'l Ctr. on Elder Abuse, NCEA, at <http://www.elderabusecenter.org/ncea/index.html> (last visited Mar. 17, 2003).

84. NEAIS, *supra* note 2, at 3.

85. Wasik, *supra* note 82, at 78.

86. NEAIS, *supra* note 2, at 4.

87. Wasik, *supra* note 82, at 78.

88. *Id.*

89. NEAIS, *supra* note 2, at 4-7.

90. *Id.*

91. *Id.* The report provided the following percentages for types of elder abuse: neglect (48.7%); emotional/psychological abuse (35.4%); financial/material exploitation (30.2%); physical abuse (25.6%); abandonment (3.6%); sexual abuse (0.3%); other (1.4%). It should be noted that total percentages do not equal totals across abuse categories because more than one substantiated type of abuse was often reported for an incident.

domestic violence are now discussed openly on a regular basis in the media, elder abuse has trailed in both public discussion and overall awareness.

Many experts in the field of elder abuse prevention compare the current knowledge and response to elder abuse with the state of child abuse a generation ago.⁹² The state of clinical science concerning elder abuse in the year 2000 has been compared to the clinical knowledge of child abuse in the 1960s.⁹³

The Child Abuse Prevention and Treatment Act of 1974 is widely heralded as an important milestone in the recognition of child abuse nationwide by both the general public and medical professionals. The law brought a national focus to the issue and helped ensure consistent definitions and standards in state child protection programs.

In contrast, with no similar federal legislation addressing elder abuse, research of state APS programs has noted several impediments to the development of a national policy for preventing elder abuse. State APS programs differ widely in structure and administration compared to state child protection programs. In addition, there are many variations in the types and definitions of abuse between states, as well as differences in age of eligibility for services and program reporting requirements.⁹⁴

There are a number of other factors that are impediments to preventing elder abuse.⁹⁵ These include problems of detection or recognition, issues of reporting, proof of abuse, and resolution issues.⁹⁶

Studies have documented how recognition of elder abuse varies even among professionals charged with preventing it.⁹⁷ A staff member in charge of an abuse registry at a state board of nursing felt that

92. See Mark Lachs, Nat'l Inst. of Justice, *Selected Clinical and Forensic Issues in Elder Abuse*, in ELDER JUSTICE: MEDICAL FORENSIC ISSUES CONCERNING ABUSE AND NEGLECT (DRAFT REPORT) (2000), at http://www.ojp.usdoj.gov/nij/elderjust/elder_16.html (last updated Aug. 13, 2002).

93. *Id.*

94. Carolyn Goodrich, *Results of a National Survey of State Protective Service Programs: Assessing Risks and Defining Victim Outcomes*, 9 J. ELDER ABUSE & NEGLECT 69, 83 (1997).

95. See Catherine Hawes, Nat'l Inst. of Justice, *Elder Justice—U.S. Department of Justice Roundtable Washington, D.C. October 18, 2000*, in ELDER JUSTICE: MEDICAL FORENSIC ISSUES CONCERNING ABUSE AND NEGLECT (DRAFT REPORT) (2000), at http://www.ojp.usdoj.gov/nij/elderjust/elder_16.html (last updated Aug. 13, 2002).

96. *Id.*

97. *Id.*

threats, yelling, and cursing by a nursing home employee to a resident did not constitute abuse.⁹⁸ A staff member from a similar agency in another state did not believe that actions resulting in “minor bruises” to a frail resident constituted abuse.⁹⁹

According to the National Elder Abuse Incidence Study, only 8.4% of all reports to APS programs came from physicians, nurses, or clinics.¹⁰⁰ Other research has shown that “among health care professionals, physicians tend to be the rarest reporters of elder abuse to State agencies.”¹⁰¹ A survey of APS professionals “suggested that doctors were the least likely group to uncover new cases, after social workers, nurses, paramedical personnel, and other health professionals.”¹⁰²

The problem of recognition by family and friends of the abuse victim is also a major barrier to the prevention of elder abuse. Many people are unable to see evidence of abuse (bruising, dehydration, unexplained injuries) as anything more than the normal results of the aging process.¹⁰³ Likewise, individuals with dementia suffer from a higher incidence of abuse,¹⁰⁴ yet are often unable or unwilling to alert family or friends. In addition, when those with dementia who are abused do speak up, their reports and complaints are often ignored as unreliable.¹⁰⁵

It has been suggested that the “reporting of abuse and neglect is a disaster at nearly all levels.”¹⁰⁶ At home, families are reluctant to report, while in institutional settings, other residents and employees are

98. *Id.*

99. *Id.*

100. Joanne M. Otto, Nat'l Inst. of Justice, *Detecting and Diagnosing Elder Abuse and Neglect (Forensic Markers)*, in ELDER JUSTICE: MEDICAL FORENSIC ISSUES CONCERNING ABUSE AND NEGLECT (DRAFT REPORT) (2000), at http://www.ojp.usdoj.gov/nij/elderjust/elder_16.html (last updated Aug. 13, 2002).

101. Lachs, *supra* note 92.

102. *Id.*

103. Hawes, *supra* note 95.

104. E.g. Carmel B. Dyer, Nat'l Inst. of Justice, *How Can We Identify the Physical and Psychological Markers of Abuse and Neglect? How Should We Educate the Healthcare Profession About These Forensic Issues?*, in ELDER JUSTICE: MEDICAL FORENSIC ISSUES CONCERNING ELDER ABUSE AND NEGLECT (DRAFT REPORT) (2000), at http://www.ojp.usdoj.gov/nij/elderjust/elder_16.html (last updated Aug. 13, 2002).

105. Nat'l Inst. of Justice, *Medical Forensic Roundtable Discussion, Detection and Diagnosis: What Are Forensic Markers for Identifying Physical and Psychological Signs of Elder Abuse and Neglect?*, in ELDER JUSTICE: MEDICAL FORENSIC ISSUES CONCERNING ABUSE AND NEGLECT (DRAFT REPORT) (2000), at http://www.ojp.usdoj.gov/nij/elderjust/elder_05.html (last updated Aug. 13, 2002).

106. Hawes, *supra* note 95.

also slow to report.¹⁰⁷ Fear of increased abuse or retaliation, social stigma, or lack of whistleblower protections are some of the reasons for lack of reporting.¹⁰⁸ Even when reports are made, the response is sometimes inadequate.¹⁰⁹ At times officials such as ombudsmen and state surveyors who receive reports of abuse in facilities fail to notify law enforcement or to encourage the complainant to do so.¹¹⁰ In addition, some officials charged with investigating abuse have little training in medical forensics or criminal investigative techniques.¹¹¹

The problem continues with agency policies that refuse investigations when no alleged perpetrator is named.¹¹² In some cases, abuse investigations are dropped if there are no witnesses other than the resident.¹¹³ These cases resemble the problems that have been faced by rape victims in the past who often had allegations dropped when cases came down to the victim's word against the word of the alleged perpetrator.¹¹⁴ Finally, some state agencies complain that local law enforcement is not interested in nursing home cases and is ignorant as to how to investigate cases in such settings, and therefore disinclined to prosecute.¹¹⁵

The problem of proving abuse relates back to the view held by many that injuries to the elderly are most likely a consequence of the aging process and not abuse.¹¹⁶ Thus, an unspoken "burden of proof" is placed upon elders to convince society that they, in fact, suffered abuse rather than injuries and declining function related to the "natural" aging process.

Finally, there is little in the way of medical forensic research to assist physicians and law enforcement to identify abuse. This research is very important to prosecutors who need better information to successfully prosecute a case of abuse. Medical forensic research will provide answers to injury-related questions such as: injury versus

107. *Id.*

108. MORE CAN BE DONE, *supra* note 44, at 11–12; see also Wasik, *supra* note 82, at 78.

109. Hawes, *supra* note 95.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

natural process, intentional versus accidental, location, appearance, and type of injury.¹¹⁷

Another current challenge in the effort to prevent elder abuse is the lack of focus on the problem at the federal level. Although several agencies in the federal government are making a determined effort to address pieces of the problem, there are problems of overlapping jurisdiction and lack of clarity as to who should take on specific cases. For example, The Senate Special Committee on Aging recently examined the issue of abuse in nursing homes.¹¹⁸ The hearing showed that in some cases a half dozen agencies or more could have jurisdiction to investigate an allegation of abuse.¹¹⁹ This overlap often leaves the abuse victim with little or no protection as no single entity takes a lead role and all agencies essentially pass responsibility to someone else.¹²⁰

D. Promising Practices in Elder Abuse Treatment and Prevention

Despite the serious barriers that continue to exist, there are numerous examples of promising practices taking place throughout the country in an effort to eliminate elder abuse, neglect, and exploitation. Many of these involve multidisciplinary teams of professionals from the fields of social work, health care, law enforcement, financial services, and others.

The Department of Justice has developed an ongoing Nursing Home Initiative that is addressing abuse in institutions.¹²¹ This effort has successfully produced state working groups that identify sub-standard nursing homes and pursue actions against them.¹²² For example, the Louisiana group includes: assistant U.S. attorneys, the state Medicaid Fraud Control Units, prosecutors, an FBI agent, the HHS/Office of Inspector General, the state survey agency, the state long-term care ombudsman, and the state Department of Health and

117. Nat'l Inst. of Justice, *Medical Forensic Roundtable Discussion, Application of the Forensic Science: Integrating Medical Forensic Evidence with Law Enforcement, in ELDER JUSTICE: MEDICAL FORENSIC ISSUES CONCERNING ABUSE AND NEGLECT (DRAFT REPORT) (2002)* at http://www.ojp.usdoj.gov/nij/elderjust/elder_06.html (last updated Aug. 13, 2002).

118. *Safeguarding Our Seniors*, *supra* note 45.

119. *See id.* at 3-4 (statement of Sen. Breaux, Chairman, S. Spec. Comm. on Aging).

120. *Id.* at 4.

121. U.S. Dep't of Justice, *Elder Justice*, at <http://www.usdoj.gov/elderjustice.htm> (last updated Nov. 19, 2002).

122. *Id.*

Hospitals. In another example of successful collaboration of legal and medical experts, the U.S. Attorney's Office has retained a nurse investigator who reviews medical records.¹²³ The nurse investigator provides an efficient and informal referral process for directly connecting the families of victims to appropriate law enforcement officials.¹²⁴

In Virginia, the working group has focused on getting pertinent information quickly to responding entities including police, regulators, and social service agencies.¹²⁵ The group includes a wide range of professionals including nursing home licensing board personnel, ambulance and EMS technicians, medical examiners, and emergency room doctors.¹²⁶ Virginia is also creating elder abuse forensic centers similar to those that exist for child abuse, domestic violence, and sexual abuse.¹²⁷ These centers are part of a broader discussion to create a national elder abuse forensic center with regional or state centers.¹²⁸

Two other innovative programs that incorporate medical expertise are housed at the colleges of medicine at Baylor University in Houston, Texas, and the University of California-Irvine in Orange County, California.¹²⁹ The Texas Elder Abuse and Mistreatment (TEAM) Institute was established in 1997. It is an interdisciplinary collaboration between the Baylor College of Medicine Geriatrics Program at the Harris County Hospital District and the Adult Protective Services Program of the Texas Department of Protective and Regulatory Services.¹³⁰ TEAM members seek to improve the lives of abused and neglected elders through clinical care, research, and education.¹³¹ The clinical part of TEAM's work involves an inpatient unit for abused or neglected older persons. The research portion involves outcome studies of treated seniors. The education component in-

123. U.S. DEP'T OF JUSTICE, OUR AGING POPULATION: PROMOTING EMPOWERMENT, PREVENTING VICTIMIZATION, AND IMPLEMENTING COORDINATED INTERVENTIONS 67 (2002).

124. *Id.*

125. Marie-Therese Connolly, Nat'l Inst. of Justice, *Elder Abuse and Neglect Prevention Efforts Through the Nursing Home Initiative*, in ELDER JUSTICE: MEDICAL FORENSIC ISSUES CONCERNING ELDER ABUSE AND NEGLECT (DRAFT REPORT) (2000), at http://www.ojp.usdoj.gov/nij/elderjust/elder_16.html (last updated Aug. 13, 2002).

126. *Id.*

127. *Id.*

128. *Id.*

129. Dyer, *supra* note 104.

130. *Id.*

131. *Id.*

cludes sending all third-year medical students at Baylor on APS investigations.¹³²

Researchers have documented that medical practitioners devote far more attention and expertise to abuse and neglect among children than they do to that among older adults.¹³³ Due to this, child abuse and domestic violence care models were studied to see how they might apply to elder abuse and neglect.¹³⁴ This analysis led to the creation of Vulnerable Adult Specialist Team (VAST) and the California Medical Training Center. VAST includes a geriatrician, a nurse practitioner, a pharmacist, a psychologist, a social worker, and a gerontologist.¹³⁵ The team investigates and examines medical and psychological injuries of older victims and documents such injuries for subsequent legal action.¹³⁶ In addition, it develops a standardized tool for documenting elder abuse and educating health care providers, attorneys, law enforcement personnel, and older persons about the issue. Team investigations often include house calls, which are much more insightful because they reveal the physical and emotional environment in which older victims live.¹³⁷

The state of Florida developed a team approach to investigating troublesome nursing homes and assisted living facilities.¹³⁸ "Operation Spot Check" involves the combined resources of the state attorney general's office, the Long-Term Care Ombudsman Program, the Agency for Health Care Administration (which administers Medicaid in Florida), state and local fire marshals, sheriff's offices, police, the Department of Children and Families, as well as building code enforcement departments.¹³⁹ Teams make random, surprise inspections of facilities to target abuse and neglect.¹⁴⁰ Participating agencies identify problematic facilities and surprise checks are scheduled.¹⁴¹ The work of the team and its schedule is so secret that team members only

132. *Id.*

133. *See generally id.*

134. *See id.*

135. U.S. DEP'T OF JUSTICE, *supra* note 123, at 48.

136. *Id.*

137. *Id.*

138. *Id.* at 65.

139. *Id.*

140. *Id.*

141. *Id.*

learn of their intended target facility when they meet at a staging area.¹⁴²

Operation Spot Check requires no additional funding because it does activities the participating agencies are required to perform.¹⁴³ Now, however, the work is done jointly and more quickly than it could be done if each agency acted individually.¹⁴⁴

In the fight against financial exploitation of older adults, one example of a successful multidisciplinary approach is the Los Angeles County Fiduciary Abuse Specialist Team (FAST).¹⁴⁵

[FAST] is a public/private partnership composed of law enforcement, medical, and financial services personnel . . . FAST works closely with bank personnel to gather information and secure assets of older persons at risk of exploitation. Mental health specialists train team members to administer assessments in order to determine if an older person is under undue influence or has diminished capacity.¹⁴⁶

The state of Oregon has taken a leadership role in protecting its older citizens against financial exploitation. Beginning in 1994, a task force has worked with and trained bank personnel to identify possible financial abuse.¹⁴⁷ Supported in part by funding from the Office of Victims of Crime at the Department of Justice, the task force has worked with the Oregon Bankers Association, the American Association of Retired Persons (AARP), the state Department of Justice, and local agencies serving older people.¹⁴⁸ In addition to the ongoing work with bank employees, a pilot program in eight counties has been initiated to train retired financial experts to investigate and gather evidence for cases of suspected elder financial exploitation.¹⁴⁹ These trained experts assist local prosecutors by gathering information needed to try a case.¹⁵⁰

Each of these programs described above demonstrates that collaborative, multidisciplinary efforts can be successful in discovering, prosecuting, and preventing elder abuse, neglect, and exploitation. Armed with the knowledge that millions of families are touched by

142. *Id.* at 65–66.

143. *Id.* at 66.

144. *Id.*

145. *Id.* at 15.

146. *Id.* at 21.

147. *Id.* at 22.

148. *Id.*

149. *Id.*

150. *Id.*

elder abuse, neglect, and exploitation every year, and because the older population is growing, it is crucial that Congress act now to bring a balanced public health, social service, and law enforcement approach to stop these crimes. Currently, not one federal employee works full-time on elder abuse, neglect, and exploitation issues. The Elder Justice Proposal (documented below) is the first comprehensive legislation ever to address elder abuse in the United States. A sampling of the provisions in the Elder Justice Proposal includes:

<i>Prevention</i>	It funds projects to make older Americans safer in their homes and neighborhoods, to enhance long-term care staffing, and to stop financial fraud before the money goes out the door.
<i>Detection</i>	It creates forensic centers and develops expertise to enhance detection of the problem.
<i>Collaboration</i>	It requires ongoing coordination at the federal level, among federal, state, local and private entities, law enforcement, long-term care facilities, consumers, advocates, and families. It funds a variety of multidisciplinary response teams to educate at every level and tackle elder abuse.
<i>Prosecution</i>	It assists law enforcement and prosecutors to ensure that those who abuse our nation's elderly will be held accountable, wherever the crime occurs.
<i>Consumers</i>	It creates a resource center to assist elders and their families in making choices about long-term care and provides them data on how to prevent and address elder abuse, neglect, and exploitation.

IV. Conclusion

Too many of our frailest citizens suffer needlessly and cannot simply move away from abuse. Frequently, these individuals cannot express their wishes or suffering, and, even if they can, often do not for fear of retaliation.

Congress has passed comprehensive bills to address the ugly truth of two other types of abuse—child abuse and crimes against women. These bills placed these two issues into the national consciousness and addressed the issues at a national level. These

laws created new federal infrastructure and funding—focusing resources, creating accountability and changing how we think about and treat abuse of women and children. And most jurisdictions now have established coordinated social service-public health law enforcement approaches to confront these abuses. But despite dozens of congressional hearings over the past two decades on the devastating effects of elder abuse, neglect, and exploitation, interest in the subject has waxed and waned, and, to date, no federal law has been enacted to address this issue in a comprehensive manner.¹⁵¹

These hearings have referred to elder abuse as a disgrace and national scandal.¹⁵² As stated previously, we found no single federal employee working full time on elder abuse in the entire federal government.

The time has come for Congress to provide seniors a set of fundamental protections. Our bill will elevate elder abuse, neglect, and exploitation to the national stage in a lasting way. We want to ensure federal leadership to provide resources for services, prevention, and enforcement efforts to those on the front lines.

It is clear in confronting child abuse and violence against women that the best method of prevention is through both law enforcement and social services. With offices in the Departments of Health and Human Services and Justice, this legislation ensures a combined public health law enforcement coordination at all levels. In addition, because elder abuse and neglect have been virtually absent from the national research agenda, this bill establishes research centers of excellence and funds research projects to fuel future legislation.

These measures lay the foundation to address, in a meaningful and lasting way, a devastating and growing problem that has been invisible for far too long. We can no longer neglect these difficult issues afflicting frail and elderly victims. The time is now to enact the Elder Justice Proposal.

The following is the Elder Justice Proposal in its entirety. It was introduced in the 107th Congress as Senate Bill S. 2933 by Senators Breaux and Hatch.¹⁵³ They will reintroduce the bill in the 108th Con-

151. Sen. John Breaux, *How to Protect Our Seniors from Elder Abuse*, THE HILL, Jul. 17, 2002, http://www.hillnews.com/news/071702/hss_breaux.aspx (last visited Mar. 30, 2003).

152. See, e.g., *Elder Abuse: A National Scandal: Hearing Before the Subcomm. on Aging*, 106th Cong. (1999); *Elder Abuse: A National Disgrace: Hearing Before the Subcomm. on Health & Long-Term Care*, 99th Cong. (1985).

153. The following Senators cosponsored S.2933 in the 107th Congress along with Senators Breaux and Hatch: Senators Baucus, Collins, Carnahan, Smith, Lin-

gress. For further information, please visit the Elder Justice Center at <http://aging.senate.gov>.

I. ESTABLISHING FEDERAL LEADERSHIP TO ASSIST STATES, COMMUNITIES AND FAMILIES IN THE FIGHT AGAINST ELDER ABUSE, NEGLECT, AND EXPLOITATION

A. CREATION OF THE OFFICE OF ELDER JUSTICE WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Secretary of Health and Human Services (“HHS”) shall establish an Office of Elder Justice within the Administration on Aging. The Director of this office shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals with experience in elder justice issues. The Director is authorized to hire the necessary programmatic, policy and administrative personnel.

The Secretary also shall appoint a Senior Advisor on Elder Justice to be located in the Office of the Secretary. This person shall be selected from among individuals who are knowledgeable about elder justice issues. The Senior Advisor shall chair an intra-agency steering committee, which shall include representatives of the following agencies of HHS: the Administration on Aging (“AoA”), the National Institute on Aging (“NIA”), the Centers for Medicare and Medicaid Services (“CMS”), the Centers for Disease Control and Prevention (“CDC”), the Agency for Healthcare Research and Quality (“AHRQ”), the Administration on Children and Families (“ACF”), the Assistant Secretary for Planning and Evaluation (“ASPE”), the Health Resources and Services Administration (“HRSA”), the Substance Abuse and Mental Health Services Administration (“SAMHSA”), the Office of the Inspector General (“OIG”) and such other offices or divisions as are deemed appropriate and necessary by the Secretary.

Background and Justification—Elder abuse is a public health, social service and law enforcement issue that requires a multi-faceted solution. Elder justice has individual and systemic definitions. From a policy perspective, elder justice consists of efforts to prevent, detect, treat, intervene in and, where appropriate, prosecute elder abuse, ne-

coln, Bond, Torricelli, Bill Nelson, Stabenow, Domenici, Rockefeller, Santorum, Burns, Miller, Harkin, Durbin. Elder Justice Act, S. 2933, 107th Cong. (2002).

glect, and exploitation. From an individual perspective, it is the right of older Americans to be free of abuse, neglect, and exploitation.

Many offices in HHS play a role in elder justice issues. AoA receives funding through Title VII of the Older Americans Act to fund activities related to addressing elder abuse, neglect, and exploitation. But elder abuse funding has been sparse, and currently is only about four million dollars. Similarly, funding under the Social Services Block Grant, the primary federal funding source for APS, remains inconsistent. Both the Executive Branch and Congress have made many efforts to bring the issue of elder abuse, neglect, and exploitation to light. But unfortunately elder abuse, unlike other difficult family issues, has not yet received sustained federal attention and resources. Creation of an Office of Elder Justice, working in conjunction with a Senior Advisor, will assure that the issue receives a high level attention in the agency, and combined with an infusion of resources will revitalize these efforts in a consistent and sustainable way.

Because so many of the HHS components have a role to play in elder justice issues, it is vital that the intra-agency steering committee be headed from an office that can assure a high degree of department-wide coordination among those many offices. At the same time, the new programmatic elder justice functions will reside in an office with already-existing programmatic functions. The Office of Elder Justice will use the existing AoA infrastructure with regard to grants, contracts, and other administrative operations and thereby avoid unnecessary duplication.

B. CREATION OF AN OFFICE OF ELDER JUSTICE WITHIN THE DEPARTMENT OF JUSTICE

The Attorney General shall establish an office to be known as the Office of Elder Justice within the Office of Justice Programs (“OJP”) of the United States Department of Justice (“DOJ”). The Director of this office shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual who has had experience in elder justice issues. The Director is authorized to hire policy, programmatic, administrative and other personnel. The Director shall have the same reporting relationship with the Attorney General and the Assistant Attorney General for the OJP as the directors of other offices headed by Presidential appointees within the OJP. The Director shall develop objectives, priorities, policy, and a long-term plan for elder justice programs and activities. The Director will implement an

overall policy and a strategy to carry out such a plan to prevent, train, treat, evaluate, research, and improve the elder justice system in the United States.

The Attorney General also will designate a Special Counsel on Elder Justice to be located in one of the following leadership offices: Office of the Attorney General, Office of the Deputy Attorney General, or the Office of the Associate Attorney General. This person shall be selected from among individuals who have experience and expertise in elder justice. The Special Counsel shall be responsible for intra-agency coordination between the Office of Elder Justice, the Office of United States Attorney, and other OJP with involvement in elder justice issues and other such offices, divisions, or components as are deemed appropriate by the Attorney General.

Background and Justification—Elder abuse, neglect, and exploitation is a law enforcement, a public health, and social service issue. The terms “abuse” and “exploitation,” and in some contexts the term “neglect,” convey a potential violation of law and certainly a violation of other social compacts. To view elder abuse and neglect as a public health or social service issue, to the exclusion of law enforcement, would be to omit a vital component in the potential responses to this complex phenomenon. Law enforcement and prosecution can play a role in redressing abuse and neglect after it has occurred. But law enforcement also can play a powerful preventive role. Community policing, for example, may result in seniors being safer in their neighborhoods and in the early detection of problems that might be preventable. Similarly, prosecution of wrongdoing conveys that there is certain conduct that the nation will not tolerate. This is a critical message to send about elder abuse, a phenomenon that has long remained shrouded from the public eye.

DOJ is not only the lead law enforcement agency in the country, but through its OJP it also pursues a multitude of projects relating to the administration of justice. OJP currently make a variety of grants and have sponsored various training and symposia. In addition, the OJP has pursued a variety of projects relating to elder justice. Similarly, the litigating divisions have pursued important cases to vindicate the rights of older people who have been abused, neglected, or exploited. However, there is no single office within the Department whose function it is to attend to this issue. Similar to the HHS model, the Office of Elder Justice in OJP will provide the programmatic, ad-

ministrative, policy, and technical assistance functions. The Special Counsel in the leadership office can easily facilitate coordination of the various components on elder justice issues. Creation of an Office of Elder Justice, working in conjunction with the Special Counsel, will assure an infusion of resources combined with high level attention in the agency to revitalize these efforts in a consistent and sustainable way.

It is noteworthy that the Department's Office of Juvenile Justice and Delinquency Prevention ("OJJDP") was created by Congress in 1974 and has addressed and provided focus and funding to issues of juvenile justice and child abuse and neglect ever since. No similar office or entity exists in DOJ or in any other federal agency to address law enforcement and victim assistance concerns relating solely to the elderly. The rapidly growing number of older people makes it imperative for these executive branch agencies to work together to meet those challenges.

C. CREATION OF A PUBLIC-PRIVATE ELDER JUSTICE COORDINATING COUNCIL

The Elder Justice Coordinating Council shall coordinate the activities of the DOJ, HHS, other relevant federal agencies, states, communities, and private and not-for-profit entities regarding elder abuse, neglect, and exploitation of the elderly. The Elder Justice Coordinating Council shall be co-chaired by the Secretary of HHS and the Attorney General, and consist of individuals including the following, or their designees:

Secretary, HHS;

Attorney General, DOJ;

One designee from each federal agency with responsibilities relating to elder abuse, neglect, and exploitation and other crimes against the elderly;

Representatives of states and communities—state delegations to include at least public health, social service, and law enforcement representatives; and

Representatives of private and not-for-profits entities known for their work and expertise in elder abuse, neglect, and exploitation.

The Elder Justice Coordinating Council shall schedule a minimum of two events a year, including an annual summit. The principals shall attend the Elder Justice Summit to receive a report on the "state of elder justice," which will include federal, state, community,

and private efforts to combat elder mistreatment issues, as well as challenges faced, promising practices, and plans and priorities for the future. Summit participants shall include federal officials, delegations from each state and representatives of quasi-governmental, not-for-profit, and private entities with expertise and experience in elder abuse, neglect, and exploitation. Participation for state delegations and non-governmental representatives shall be funded, in part, by grants authorized by this law. The Chairman and Ranking Member of the Senate Special Committee on Aging and designees of the Speaker of the House of Representatives and the Minority Leader of the House of Representatives shall be invited to attend the Summit.

In addition to the Summit, the Coordinating Council shall hold at least one other “working” meeting a year, and more if deemed to be necessary. The working meeting should be an opportunity for an in-depth analysis of the numerous phenomena that cause elder abuse, neglect, and exploitation. In addition, the working meeting(s) should permit participants to highlight promising practices, exchange information about addressing challenges, and identify needs and priorities of the group. The group, as a whole, shall determine a procedure for examining and eliciting national issues and priorities to guide the direction of the coordinating council.

In addition, the Elder Justice Coordinating Council shall provide a report to Congress every two years, which shall describe the activities, accomplishments, and challenges faced by the component entities and the Coordinating Council itself. Moreover, the report shall include recommendations for Congress regarding legislative action at the federal level or at the state level by means of model laws. The designees of the Coordinating Council shall meet as determined by the Co-Chairs.

Background and Justification—Currently, there is little national coordination of any type on elder abuse, neglect, and exploitation matters. Given that there is both a public health and a law enforcement component to elder justice issues, HHS and DOJ are in the best positions to spearhead coordinated efforts to prevent, intervene, and prosecute elder abuse through an Elder Justice Coordinating Council. Moreover, the Elder Justice Coordinating Council provides a forum for coordination with delegations from states and private and not-for-profit entities on the myriad of elder justice issues faced by those entities. Given the distinct but interrelated nature of the various phenom-

ena making up elder abuse, neglect, and exploitation, the Council may form various interest groups, which will focus on specific issues, such as: domestic violence in later life, sexual abuse, institutional and facility abuse and neglect, family violence, caregiver abuse or neglect at home, self-neglect, and financial fraud and exploitation. Although there will be entities with an interest in all of these areas, such as APS, other entities may have more specialized interests, such as the Department of Treasury, the Department of Labor, or the Department of Housing and Urban Development.

D. FEDERAL OFFICE AND DEDICATED FUNDING FOR ADULT PROTECTIVE SERVICES

A national headquarters for Adult Protective Services (“APS”) will be established in the Administration on Children and Families (“ACF”) at HHS. In addition, a dedicated funding stream will be provided to APS to investigate reports of abuse and neglect of vulnerable elderly nationwide. Duties of this office shall include: annual collection and reporting of national APS data relating to abuse, exploitation, and neglect of older persons and vulnerable adults; training; development of practices to carry out protective services and conduct related research; technical assistance; participation in the intra-agency Steering Committee; and coordination with the Office of Elder Justice in the AoA, as well as with other agencies having a role in elder justice issues.

Background and Justification—Protective services for adults came into existence as the result of a 1961 recommendation of the White House Conference on Aging that “social agencies, legal aid and bar associations, and the medical profession increase their cooperation and continue their study of ways to facilitate the provision of protective services to older people.” Prior to the 1970s, fewer than twenty APS programs existed across the country. The true impetus for states to provide APS came with the passage of the Title XX amendment to the Social Security Act in 1974. The Act permits states to use the SSBG funds for the protection of adults, as well as children.

APS exists to protect vulnerable adults and the elderly who are unable to protect themselves from abuse, exploitation, or neglect by others, or who are unable to provide for their own basic needs. Although APS exists in all fifty states, it has no federal office to provide leadership and guidance to the field or to collect and disseminate data. As APS laws evolved, each state developed its own definition of

APS. In many states, the programs are chronically underfunded and the purpose and scope of each vary broadly from state-to-state. This fragmented system leaves giant cracks for America's seniors to fall through and offers no minimal guarantee of protection for the elderly. In fact, less than one percent (0.08%) of SSBG funding allotted for victims of abuse actually reaches the elderly, while ninety-three percent goes to child abuse and six percent to domestic violence victims.

Development of meaningful measurements of protective service outcomes has been hampered by the variation of state services, lack of uniform definitions of abuse, and lack of up-to-date case management systems. This underscores the need for a federal APS office that can provide leadership and promote increased uniformity in programs, caseloads, training, funding, and worker competency. Improved coordination between protective services and law enforcement professionals, as provided for by this proposal, will enable an enhanced level of protection against abuses of vulnerable adult and older Americans.

II. IMPLEMENTING SUCCESSFUL STRATEGIES FOR PREVENTING AND ADDRESSING ELDER ABUSE, NEGLECT, AND EXPLOITATION

A. RESOURCE CENTER FOR CONSUMERS, FAMILIES, PROVIDERS, ADVOCATES, REGULATORS, LAW ENFORCEMENT, POLICY MAKERS, AND RESEARCHERS

HHS shall establish a national Elder Justice Resource Center at AoA in the Office of Elder Justice to be the central repository for information about elder abuse, neglect, and exploitation. This Resource Center shall develop the capacity and procedures to collect and disseminate information relevant to consumers, families, providers, advocates, regulators, law enforcement personnel, policy makers, and researchers. In addition, the Resource Center shall provide funding to other public, private and not-for-profit entities to develop clearing-houses on specialized topics, which shall coordinate with and be linked to the Elder Justice Resource Center. Some of these projects should receive "seed" funding, with the goal of becoming self-sustaining over time.

1. *Public Elder Justice Information* The Resource Center is designed to collect, maintain, coordinate, and disseminate information on laws,

funding sources, publications, conferences, statistics, databases, the justice system, protective and health services, and other information relevant to the prevention, assessment, identification, treatment, intervention, and prosecution of elder abuse and neglect. This Resource Center shall provide, in a user-friendly fashion, America's seniors and their families with information about how to avoid becoming a victim of elder abuse, neglect, or exploitation. The Resource Center will also provide links to other sources of information, including the Long-term Care Consumer Clearinghouse referenced later in this document. The Resource Center also shall compile, analyze, and publish a summary of the research conducted and solicit public comment. It also shall establish a toll free phone number for information and referrals.

Background and Justification—Because of the decentralized nature of efforts to combat elder abuse, neglect, and exploitation, it is imperative to have a centralized source for a broad range of informational materials. This information must be readily accessible and useful to different populations in a multitude of ways. The Resource Center should be a comprehensive source of such information. The center should include information relevant to the prevention, detection, treatment, intervention, and prosecution of elder abuse, neglect, and exploitation. It should also include information relevant to a broad range of potential users on all types of elder abuse, neglect, and exploitation. The information will be useful to those seeking help and should be easy to use.

2. *National Elder Justice Library of Training, Technical Assistance, and Promising Practice Materials* The Resource Center will house a national library of training, technical assistance, and promising practice materials, as well as a web-based index and brief description of materials housed in that library. The library shall be a centralized repository for all types of training, technical assistance, and promising practice materials in all mediums, including brochures, video, computer-based materials, books, pamphlets, and training modules. These materials shall be available to be copied by individuals and entities nationwide. In addition, the Elder Justice Library shall fund an analysis of what already exists in the library and identify what types of materials still need to be generated. The library will also do the following: fund the development of technical assistance kits for use in various settings, develop strategies for effective disseminations, identify what

types of materials still need to be generated, and promote research into what kind of training and technical assistance is needed. Once available materials have been collected and evaluated, “toolboxes” should be developed for use by various professionals in various settings. Such “toolboxes” should include, at a minimum: training, technical assistance, and promising practice information specific to the specific topic, group and setting.

Background and Justification—A broad variety of training, technical assistance, and promising practice materials exists. For example, training and “train-the-trainer” videos are used for police roll calls, training of bank tellers, and training of nurses aides. A “safe-return” training program has also educated law enforcement about dementia. Thus, many different types of brochures, pamphlets, and protocols exist and there have been *ad hoc* efforts to collect information about promising practices. However, there is no central location where those materials are available, and thus those venturing into this area often find themselves “reinventing the wheel.” The Elder Justice Library should be based on the premise of broad general access to all types of materials. (See training grant discussed below.)

3. *Centralized Reporting on Elder Abuse, Neglect, and Exploitation* Grants shall be provided to states to improve, streamline, and promote more uniform data collection. As a condition of receiving monies, states, communities, APS, long-term care ombudsmen, academic centers and any other public, private, or not-for-profit entities, and federal entities, must provide reports to a centralized repository at HHS, relating to episodes or reports of elder abuse and neglect and the status and result of action pursued by social services and health and law enforcement agencies. HHS shall develop a federal data system which coordinates existing federal, state, regional, and local elder welfare data systems. The Secretary shall determine the procedure and mechanism for such reporting, and may conduct such research or pilot tests as are necessary to determine the best mechanism for collecting, maintaining, and disseminating the data.

Background and Justification—To assess the scope and nature of elder abuse, neglect, and exploitation, it is imperative to gain a better handle on overall data and individual reporting nationwide. Although diverse reporting requirements in different states and complexities accompanying various confidentiality and privacy require-

ments exist, it is nonetheless critical to begin the process of compiling a centralized database on elder abuse, neglect, and exploitation. This data repository will be an invaluable resource for research, training, raising public awareness, and guiding public policy.

B. RESEARCH AND DEMONSTRATION PROJECTS

HHS and DOJ shall provide and assist in the development of a series of grants, studies, and demonstration projects to be conducted by state, academic, private, and not-for-profit entities to assist in preventing, detecting, treating, intervening and, where appropriate, prosecuting elder abuse, neglect, and exploitation. The various issues to be studied include:

- physical and psychological/emotional abuse and neglect by family and other in-home caregivers
- physical and psychological/emotional abuse and neglect of residents in institutional and other residential care facilities
- elder sexual abuse
- domestic violence in later life
- financial fraud and exploitation
- self-neglect

Each of these issues or sub-issues should be studied alone and in relationship to the other factors. Such research will enhance understanding of each phenomenon, and provide important information about how best to prevent, intervene, treat and, if appropriate, prosecute elder abuse, neglect, and exploitation. There are complex human subjects protection issues in any research involving individuals with diminished capacity or the study of allegations of abuse, neglect, or exploitation. One or more of the Centers of Excellence (discussed below) should examine human subject protection concerns and provide guidance to other researchers for how to navigate the Institutional Review Board (“IRB”) process in elder abuse, neglect, and exploitation research. These grants and projects should assist states and communities in developing and operating programs designed to meet these goals, as well as in providing “seed” money to projects that over time should become self-sustaining. Both HHS and DOJ will have the authority and flexibility to create and design the necessary studies and demonstration under this section though both should include, at a minimum, those outlined below.

Background and Justification—Given the paucity of research in this field, the evidence-based knowledge is meager. The projects outlined below are intended to lay a foundation for addressing elder abuse, neglect, and exploitation. Many of the provisions are modeled after efforts in other areas; others are adapted to the special needs in the field of elder abuse.

Notably, some categories of elder abuse would be categorized as “family violence.” However, others would not. Some involve a wrongful act by another person or entity; others do not. Problems may arise in different settings and involve different mechanisms—physical, verbal, psychological, financial, or material. Yet the consistent factor is that the victim is an older person, whose needs must be better understood. Far too often there is a nexus between different types of abuse. Often multiple forms of abuse, neglect, and/or exploitation occur at the same time and one type is catalyzed by another. For example, it appears that someone who is neglected is more likely to become a victim of financial exploitation while someone who has been financially exploited is more likely to decline into depression catalyzing self-neglect.

1. *Creating Centers of Excellence Specializing in Elder Abuse, Neglect, and Exploitation* HHS shall provide funding to create five Centers of Excellence specializing in elder abuse, neglect, and exploitation. These centers will concentrate expertise, research, clinical practices, training, and dissemination of information to one location in order to promote development in the field. In addition, an Advisory Committee shall be created, comprised of non-federal employees and representatives of federal and state entities with expertise in various fields, including researchers, practitioners, policy experts, and others to promote appropriate and useful research. The individuals on the Advisory Committee shall have a demonstrated interest and expertise in research, education, and clinical activities related to elder abuse, neglect, and exploitation. The Committee shall also ensure that the activities of the Centers of Excellence will be well coordinated. The Committee will also set priorities and adequate procedures and mechanisms for full data sharing among the Centers of Excellence.

Background and Justification—Given the dearth of research in elder abuse, neglect, and exploitation, centers of excellence will provide a body of data to inform future efforts. The advantage of a field

in its infancy is the opportunity to ensure—from the beginning—that efforts, procedures, and mechanisms are well coordinated and provide for full data sharing. The Advisory Committee is modeled on a similar type of committee established in the Veterans' Administration to oversee and advise the Geriatric Research and Education Centers ("GRECs"). The GRECs and their Advisory Committee have proven to be a successful model in geriatrics. In addition, the National Academy of Sciences ("NAS") shortly will release a report with a recommended national research agenda on elder abuse and neglect, which should provide additional recommended areas for research. Given the likely influx of additional research proposals, the relevant grant-making entities shall assure that they have sufficient personnel to process and administer those projects. The following are areas in which research projects are needed:

a. National Incidence and Prevalence Study The National Institute on Aging ("NIA") shall provide the funding necessary to conduct a national incidence and prevalence study.

Background and Justification—Measuring the scope of elder abuse, neglect, and exploitation is critical to formulating the proper response. It is anticipated that the NAS panel will provide recommendations and guidance for pursuing such a study. It is noteworthy that the Child Abuse Prevention and Treatment Act has provided for several incidence and prevalence studies in the years since its enactment.

b. Developing Uniform Screening Tools HHS shall provide funding to develop uniform tools to assist practitioners and families in screening for elder abuse, neglect, and exploitation. The screening tools to be developed should include short and long form tools for elders and their caregivers.

Background and Justification—Many different screening tools currently are used to assist health care, social service, emergency, and other professionals to detect elder abuse, neglect, and exploitation. These tools have differing strengths and weaknesses; however, the fact that there are so many different instruments alone presents challenges, particularly in data collection. This provision authorizes a grant to develop uniform tools for use by practitioners in screening for elder abuse, neglect, and exploitation. The short forms would be for use in busy environments, such as emergency rooms. The long forms

would be intended for environments where a more comprehensive review is possible, or for situations where the short form indicates potential abuse, neglect, or exploitation. Having a standardized instrument will promote the collection of more uniform data, and will be key to developing a base of information.

c. Identifying Community Strategies to Make Elders Safer HHS and DOJ shall make grants for research and/or demonstration projects designed to study and identify ways of making homes, neighborhoods, communities, and facilities safer places for older people to live. The project should identify current projects, evaluate their effectiveness, and recommend how such efforts can be replicated in other communities.

Background and Justification—While pursuing cases where abuse, neglect or exploitation have already occurred is a valid and important part of any effort to address elder abuse, the primary goal is to prevent abuse before it happens. This bill will ensure such a goal. Many communities have implemented efforts to increase senior safety and decrease isolation.

d. Jump-Starting Intervention Research At least one of the Centers of Excellence will assure a focus on intervention strategies and determine the effectiveness of these strategies.

Background and Justification—While research in the area of elder abuse is sparse, intervention research is almost non-existent. Despite this absence of guidance, individuals are still victimized, and thus APS, ombudsmen, families, health care providers and others still must respond to the allegations of abuse, neglect, and exploitation. It is critical that efforts to prevent victimization are methodically studied so that the most successful can be identified, disseminated, and replicated.

2. Developing Data About Forensic Markers and Methodologies

a. Creating Mobile and Stationary Forensic Centers DOJ and/or HHS shall make grants to create both mobile and stationary forensic centers to develop and enhance the forensic expertise of elder abuse, neglect, and exploitation. At least one of those forensic centers shall be located at a Center of Excellence, and each one of the Centers of Ex-

cellence shall develop the capacity to collect forensic evidence or evidence relating to a potential determination of abuse or neglect. Stationary centers will be located at three academic institutions around the country that have demonstrated an expertise in this area. In addition, the grant will fund a pilot for five mobile forensic units. The elder forensic centers shall develop expertise with the goal of providing medical and forensic evaluation, therapeutic intervention, victim support and advocacy, case review, and case tracking.

Background and Justification—As with child abuse in the 1960's, little is known about identifying the signs of elder abuse, neglect or exploitation. Absent forensic evidence of elder abuse, it is difficult to prosecute a criminal case. Forty years ago, child abuse was still considered to be solely a social services problem and not a law enforcement problem. Just as it was said that children bruise and fall often when considering child abuse, it is often said that frail elderly are also injured easily. We simply do not yet know what patterns in bruising or what types of fractures indicate that someone has been abused. In addition, currently there are no identifiable patterns of decubitus ulcers or malnutrition to indicate that someone has been neglected. There are 282 established Child Advocacy Centers around the country and over 300 centers in development. These centers provide comprehensive, culturally competent, multi-disciplinary team responses to allegations of child abuse in a dedicated, child-friendly setting. The team responses include: medical and forensic evaluation, therapeutic intervention, victim support and advocacy, case review, and case tracking. There is no such center for elders who are abused, neglected, or exploited.

The analysis of whether an older person has been abused or neglected is often a complex issue. It is complicated by the fact that the conditions and illnesses of aging may mask or mimic the signs of elder abuse or neglect. In addition, many of the frailest elders suffer from dementia, making explicit reporting by the victim unlikely. Because these issues are not part of the national consciousness, many people consider it inconceivable for an older person to be a victim of a sexual assault or for adult children to abuse their parents. Such assumptions compound problems in detection and lead to delayed assessment.

Many health and social services professionals report that a house call to the elder's home is the best way to identify potentially abusive,

neglectful, or exploitative aspects of an elder's living arrangement. Thus, the utility of mobile forensic units should be a pilot-test of gathering forensic information from the elder's home.

b. Forensic Training for Geriatricians HHS shall provide for grants and programs to provide cross-training in geriatrics and forensic pathology. These grants would be available at the fellowship level, as well as to experienced practitioners who wish to cross-specialize.

Programs shall be developed by funded fellowships to promote career development of eligible individuals as forensic-trained geriatricians. Under this provision, eligible individuals will be board certified or board eligible in internal medicine or family practice and will have completed an approved fellowship program in geriatrics. Recipients of the award will be required to complete a standard forensic science training program. Subsequently, awardees will provide training in forensic geriatrics to interdisciplinary teams of health care professionals.

Background and Justification—Detection and prosecution of child abuse and neglect has been significantly enhanced by having a group of forensic pediatricians who also have expertise in pediatrics and forensic pathology. These individuals are trained to detect signs of abuse and neglect, and are experienced and not reluctant to intervene, report, and, if necessary, testify to their findings. Physicians without such training or expertise are often less likely to detect signs of abuse or neglect. They are often unfamiliar with potential interventions and treatments and reluctant to begin the process of reporting and possibly testifying. Precedent for creating fellowships to geriatricians exists in the "Health Professions Education Partnerships Act of 1998," which created Geriatric Academic Career Awards to promote the development of physicians as academic geriatricians.

c. Development of Forensic Markers and Methodologies to Assist in Detection and Diagnosis of Elder Abuse, Neglect, and Exploitation The forensic centers will research to identify and disseminate forensic markers that may indicate elder abuse, neglect, or exploitation.

Background and Justification—One of the most significant impediments to accurate measurement of elder mistreatment is a dearth of knowledge in how to detect it among health, emergency, social services, and legal providers. Development and dissemination of evi-

dence-based forensic markers of abuse, neglect, and exploitation will assist those on the front lines to detect potential problems. The front line personnel include: coroners and medical examiners; family practitioners and emergency room physicians; APS; long-term care ombudsmen; and medical directors. Development and dissemination of forensic methodologies will also assist those on the front line to know when and how to intervene and when to defer to law enforcement.

3. *Support for Victims and At-Risk Elders*

a. *Victim Advocacy and "Safe Havens"* HHS shall make grants available to study the special needs of older victims. It also will provide for pilot programs for training and special approaches designed to better understand and meet the needs of victims of all types of elder abuse, neglect, and exploitation.

HHS shall provide grants to five diverse communities to identify what types of elder shelters or "safe havens" are needed and to pilot - test different models. These shelters, or safe havens, shall provide a comprehensive, culturally competent, multi-disciplinary team response to allegations of elder abuse, neglect, or exploitation in a dedicated, elder-friendly setting. The team response will include medical, nursing, and forensic evaluation, therapeutic intervention, victim support and advocacy, case review, and assistance to find placement in a safer environment. These safe havens shall generate data that will assist other states and communities to determine which model is most appropriate given their population and needs.

Background and Justification—Considerable effort has been expended in learning how to address the special needs of groups of children and women victims, and similar effort is needed to identify and meet the special needs of older victims. Anecdotal evidence and common sense tell us that older victims need more assistance with health issues, medication, and transportation. Their generational and individual concerns may lead them to feel shame about revealing or talking about traumatic events. Therefore, victim advocates can be extremely helpful in assisting victims in overcoming traumatic events.

A victim might need assistance with finding a safe place to reside. When an abused or neglected person must be taken out of an unsafe living environment, his or her options are limited and unknown. In many communities, Child Protective Services can take a child to a shelter or a foster family until a safer living situation can be

arranged. Similarly, there are shelters for battered women in many communities. There are, however, few such options where vulnerable older people can go to get out of harm's way. There also exist special concerns where the older victim is frail or has numerous complex medical needs. In some communities, nursing homes and other long-term care facilities serve as safe havens. But other communities have no such mechanism, and there is no evidence-based literature on what types of safe havens are best suited for given populations. These pilot projects should generate data that will provide states and communities the information they need to develop the most appropriate programs based on their individual needs.

b. Pilot Programs to Support At-Risk Elders Through Legal Advocacy, Guardianship, Volunteers, Faith-Based and Not-For-Profit Organizations HHS shall establish grants in communities where such programs do not already exist or are underfunded to provide resources for the following: court-appointed advocates, legal services for older victims, public guardians, monitoring of guardianship and enhanced volunteers, and faith-based and not-for-profit work in prevention of elder abuse and assistance of victims.

HHS and DOJ shall establish grants to support the increased involvement of volunteer, faith-based, and not-for-profit organizations in the fight against elder abuse, neglect, and exploitation. As Americans age, there is a growing pool of older volunteers with a broad array of expertise who have much to offer in the fight against elder abuse, neglect, and exploitation. Moreover, there are a variety of faith-based organizations with the experience and networks to aid in the prevention of elder mistreatment.

Background and Justification—In many different types of legal proceedings, older people may need representation and assistance. Although some programs and jurisdictions provide a variety of services, those services are not always available in a way that can be used by those at-risk. For example, someone who has been financially exploited may have lost considerable assets and need help to retrieve assets or stall foreclosure on their house. But these services and resources are not always available to provide at-risk elders the assistance they need. Thus, it would be useful to determine which types of services and delivery models are most effective in preventing or ameliorating the effects of elder abuse, neglect, and exploitation.

Volunteer, faith-based, and other not-for-profit organizations often already have developed the necessary infrastructures and networks to develop and enhance programs that could address elder abuse, neglect, and exploitation. They already have the staff, volunteers, and methodologies for aiding victims. Pilot programs should be offered to these groups to further study and refine their approaches so that they may be replicated to address elder abuse, neglect, and exploitation.

4. *Supporting Multi-Disciplinary Efforts* There is widespread consensus that problems as complex and multi-disciplinary as elder abuse, neglect, and exploitation often require a multi-disciplinary response. Thus, this grant establishes a fund for multi-disciplinary endeavors of various types, including the following:

a. *Social Service-Medical Teams Responding to Allegations of Elder Abuse, Neglect, and Exploitation* HHS and DOJ shall establish grants to fund pilot testing of multi-disciplinary response teams and study the outcomes based on various measures, different team composition, and procedures.

Background and Justification—Academic centers house multi-disciplinary teams comprised of some combination of APS, geriatricians, gerontologists, statisticians, psychologists, forensic psychiatrists, medical examiners, police, and prosecutors on an as-needed basis. There are many potential models depending on which individuals listed above are chosen for the center. In one model, the team meets weekly at APS to review cases and mount a coordinated response. Often, geriatricians accompany APS workers on house calls, and sometimes law enforcement may accompany the team as well. These teams provide a very useful model for coordinated and thorough responses to elder abuse, neglect, and exploitation. Although the number of these programs throughout the country is small, there are differences among them. It would be useful to examine existing programs and describe the similarities and differences and the impact of the different procedures and team compositions.

b. *State Coordinating Bodies* Modeled after the federal Elder Justice Coordinating Council with the intention to promote coordination

at the state level, the HHS and DOJ shall establish grants available to states that wish to develop state coordinating committees. These state coordinating committees shall provide the federal Elder Justice Coordinating Council with information and recommendations relating to efforts at the state level relating to elder abuse, neglect, and exploitation. Additional funding shall be made available to the states for coordinated efforts on specific topics. For example, DOJ shall receive funding under this provision to fund efforts, provide training, technical assistance, and other support to the nursing home abuse and neglect prevention and prosecution State Working Groups, and for elder justice efforts pursued by the State Working Groups beyond nursing home issues.

DOJ shall fund a grant to pilot test various models of fatality and serious injury review teams. In advance of the pilot testing, necessary issues relating to fatality review teams shall be studied to inform the designated composition and function of the teams. The different models that are pilot tested should be evaluated, resulting in a report permitting replication by others.

Background and Justification—Coordination at the federal level is important. However, because each state has its own distinct way of approaching elder mistreatment issues, it is equally important that there be coordination at the state level, and often at the local level as well. A variety of state multi-disciplinary teams will be funded under this section. States may model a general coordinating group on the federal Coordinating Council. These groups shall select state delegations to attend the national Summit and coordinate with other states, as well as other entities, at the national Elder Justice Coordinating Council meetings.

Another type of multi-disciplinary group was created as part of the DOJ Nursing Home Initiative. These “State Working Groups,” working under various names, coordinate state efforts relating to nursing home abuse and neglect prevention and prosecution. Some groups address other issues as well. Those teams are composed of entities in different states which pursue various goals. For example, in Louisiana, the State Working Group includes representatives from: several district United States Attorneys’ offices, the Federal Bureau of Investigation, the HHS/Office of Inspector General, the Centers for Medicare and Medicaid Services (CMS), the state Surveyor, the state Attorney General’s office, the state Department of Health and Hospi-

tals, the Medicaid Fraud Control Unit, and the state long-term care ombudsman. Although such groups do not exist in all states, the ones that do exist have provided a useful forum to identify, review, pursue, and/or prosecute nursing homes with the most problematic track records. Groups also discuss different approaches and participate in training, outreach, and identification of promising practices at the state level.

A third type of state multi-disciplinary team is focused on child abuse. Child fatality review teams have existed for many years. They examine unexpected or unexplained deaths and serious injuries of children. Thus, elder fatality and serious injury review teams could be very helpful in assessing questionable deaths or serious injuries relating to elderly victims. This assessment is, however, a complex task for several reasons. First, people do not expect children to die and they do expect older people to die at some point. Thus, when a child dies without a satisfactory explanation there is automatically an inquiry into the death. When an older person dies, often no questions are asked, regardless of the circumstances. Second, more older people die or suffer serious injury without explanation. Thus, any blanket policy for review by fatality review teams, while manageable to handle inquiries into the deaths of children, might result in an overwhelming increase in caseload for coroners, medical examiners, and others if implemented for such elder deaths as well. Thus, establishing the criteria, composition, and function of an elder fatality review team is an important prelude to its creation. It would be very useful to bring multi-disciplinary expertise not only to certain identified elder death reviews, but also to the analysis of serious injury to determine whether it was the result of abuse or neglect, or resulted from benign causes.

c. Training DOJ and HHS shall make grants available for training individuals from myriad disciplines relating to elder abuse, neglect, and exploitation. Funds shall be available for the following: beginning, intermediate, and advanced training modules offered during a broader curriculum or for intensive training relating to elder justice issues, training within a discipline, and cross-training. Cross-training or multi-disciplinary training permits individuals from a variety of fields to learn together about elder abuse. Cross-training also fosters

communication and coordinated efforts and lays the foundation for collaboration among diverse individuals and groups.

Disciplines for which training is envisioned under these grants include: (1) physicians (geriatricians, family practitioners, internists, emergency physicians, forensic pathologists/medical examiners, psychiatrists, and other specialists); (2) nurses; (3) nurses aides; (4) social workers; (5) public health professionals; (6) state surveyors (who survey nursing homes and other long-term care facilities); (7) long-term care and hospital staff; (8) regulators; (9) APS; (10) long-term care ombudsman; (11) other types of advocates for older and disabled people; (12) volunteers; (13) faith-based organizations; (14) police, sheriffs, detectives, and state and federal investigators; (15) federal, state, and local prosecutors; (16) judges and court workers; (17) civil attorneys; (18) Emergency Medical Services professionals; (19) fire fighters; (20) coroners; (21) Sexual Abuse Nurse Examiners (SANE nurses); (22) victim advocates; (23) TRIADs; (24) elder service officers; (25) bank personnel; (26) postal workers; (27) utility workers and others who may visit the homes of older people; (28) therapists, including creative arts, occupational, speech, and physical therapists; (29) funeral home operators; (30) public safety officers; (31) corrections personnel; (32) home delivered meals providers; and (33) students in professional and paraprofessional schools, internships, fellowships, and other training programs in a relevant profession. Training materials to provide or support such training shall be available through the national Elder Justice Library housed in the Resource Center discussed above. Training funded by these grants shall have clear goals and objectives.

Background and Justification—Most people do not have the necessary training or information to identify, respond to, prevent, or report elder abuse, neglect, or exploitation. Similarly, many professionals who may come in contact with victims of elder abuse and neglect, even if they suspect abuse, do not have any protocol or internal reporting mechanism to address it. Training programs rarely include information about elder abuse. Similarly, those in the relevant professions often are not aware of others with a role in addressing elder mistreatment; in other words, all too often, professionals do not know who to contact if they suspect elder mistreatment. Training grants under this statute will permit a broad range of training options to ensure that the problem of elder mistreatment will be solved.

D. ENHANCING THE LAW ENFORCEMENT RESPONSE

1. *Creation of a Center at the American Prosecutor Research Institute to Provide Support in Cases Involving Elder Abuse, Neglect, and Exploitation* The DOJ shall establish a grant to the American Prosecutor Research Institute (“APRI”) of the National District Attorneys Association (“NDAA”) to establish a Center for the Prosecution of Elder Abuse, Neglect, and Exploitation. This Center shall serve a function similar to other APRI Centers, by supporting local prosecutors nationwide to pursue cases involving elder mistreatment.

Background and Justification—APRI’s National Center for Prosecution of Child Abuse, which has been in existence for sixteen years, has been the clearinghouse for information and support to prosecutors and allied professionals for all needs associated with prosecuting physical, sexual abuse, and neglect cases. Elder abuse, neglect, and exploitation cases often arise at the local level, and can be complex cases to prosecute. There is currently no national resource for local prosecutors to utilize to gather information on elder mistreatment. This proposed center would allow APRI to develop such a national resource.

2. *Resources for Technical, Investigative, and Victim Assistance Support for Federal Cases Involving Elder Justice* Resources shall be provided to the DOJ to support cases relating to elder justice. These resources include funds for federal prosecutors handling failure of care cases to hire nurse-investigators or other experts. Moreover, it includes funding for a Resource Group to assist prosecutors nationwide in pursuing failure of care cases. The HHS Office of Inspector General also shall be provided with funds to hire nurse investigators or other experts needed to investigate failure of care allegations. In addition, the DOJ shall be provided with funding to support cases addressing financial scams targeting seniors, such as telemarketing, Internet, credit card fraud, schemes targeting older Americans orchestrated from outside the United States, and predatory lending cases.

Background and Justification—Nurse investigators and others with similar expertise are critical to pursuing federal failure of care cases, usually involving an individual or entity that knowingly bills the United States for inadequate care. This section provides resources for such assistance.

3. *Grant for an Employee Charged with Coordinating Elder Justice Activities by National Association for Attorneys General* Grant funding from the DOJ shall be provided for the National Association for Attorneys General (“NAAG”) to hire a full time employee to coordinate elder justice matters and to work with NAAG leadership in establishing policy directions in that area.

Background and Justification—State Attorneys General pursue numerous types of cases relating to elder justice, including financial fraud cases. These are cases where elders are victims of financial scams, domestic violence, and/or institutional abuse and neglect.

4. *Community Policing and Other Law Enforcement Efforts to Make Neighborhoods Safer for Older People* The DOJ shall establish grants to develop community policing and other law enforcement efforts designed to make communities safer for elders. In addition, grants shall be provided to support special elder units, or in rural areas with smaller police and sheriff’s departments, a specially trained elder officer. These projects should be evaluated to determine which ones should be replicated and disseminated to other communities.

Background and Justification—As the older population grows, community policing efforts focused on keeping seniors safe will become increasingly important. Currently, there are a number of good programs all over the country. One example is the Safe Return Program, which is a nation-wide public-private partnership between the DOJ and the Alzheimer’s Association that educates law enforcement officials on the utilization of a national database containing identifying information for Alzheimer’s patients who may wander from their home or nursing facility. Secondly, Illinois police departments provide free training for “Elder Service Officers” to police nationwide. In other locations, police have made visiting long-term care facilities part of their regular shift. Still other communities are working with police to stay in touch with isolated elders. The TRIAD program—a collaboration of the National Sheriffs’ Association, AARP, and other entities, with a presence in more than 800 counties nationwide—is expanding its focus to address not only street crime victimizing elders, but all forms of elder abuse, neglect, and exploitation. These projects and many others like them can be of vital importance to the lives of individual elders and set the tone for an entire community. These various

efforts should be studied to determine which are the most effective and should be replicated.

5. *Study to Determine Effectiveness of Law Enforcement and Prosecutorial Efforts* The DOJ shall provide funds to study the impact of various types of state and local investigations and prosecutions relating to elder abuse, neglect, and exploitation. The funds will also provide an analysis of the impact on prosecutions when prosecutors and investigators work with elder victim assistance professionals.

Background and Justification—It is useful to periodically conduct an independent evaluation of the overall impact of different types of investigations and prosecutions. This will aid in determining which investigations are most effective in addressing a crime and influencing future behaviors and which ones have unintended consequences. In this regard, the study must sample and quantify the outcomes of a reasonable number of investigations and prosecutions and draw a correlation to the desired impact of curbing elder abuse, neglect, and exploitation. Many prosecutors and investigators working in child abuse prevention have found it vital to include victim assistance professionals as part of the team. These professionals play a significant role in supporting victims and ensuring their ability to participate in court proceedings. Thus, the study envisioned would evaluate how outcomes are impacted by the use of victim advocates and what types of victim assistance are most needed.

6. *Examining the Roles of Law Enforcement, Protective Services, and Advocates in Responding to Allegations of Wrongdoing* A study shall be conducted of the roles and procedures employed by law enforcement and protective and social service professionals in responding to allegations of unlawful elder abuse, neglect, and exploitation in various jurisdictions. In addition, it should examine the relationship between long-term care ombudsmen, APS, and victim advocates, which sometimes have differing approaches. The study should evaluate the following: how various models work, which procedures, protocols, and infrastructures improve effective responses, what recommendations on how to structure the arrangements can be provided, and how communication can be encouraged in different circumstances.

Background and Justification—In many states where potential elder abuse, neglect, or exploitation is alleged, APS conducts an inves-

tigation. In some jurisdictions, law enforcement would prefer to use its forensic expertise to conduct the investigation. In other jurisdictions, however, where law enforcement and prosecutors are less inclined to pursue elder abuse cases, APS may attempt to investigate the matter as thoroughly as possible to build the case for law enforcement to investigate and prosecute. The procedures and protocols that work best depend on the community. The relationship between law enforcement and protective service providers, and the procedures and protocols for handling allegations, have been memorialized in memoranda of understanding (“MOUs”) or by other means in other jurisdictions. In other communities, the respective roles and responsibilities are still in flux and sometime cause conflict.

E. ENHANCING THE PUBLIC HEALTH AND SOCIAL SERVICE RESPONSE

1. *Examine and Make Recommendations About Clear Roles, Responsibilities, and Needs of APS, Long-Term Care Ombudsmen and Other Entities Charged with Advocacy and Protection Activities* HHS shall fund a study of the roles and responsibilities of APS, the long-term care ombudsman programs, and other relevant advocacy and protection organizations, to identify barriers that impede them from providing needed services.

Background and Justification—Numerous entities are charged with protection of and advocacy for various populations of older and vulnerable adults. In most states, APS represents vulnerable adults, age eighteen and older, although in a handful of states, APS represents only those over the age of sixty. State and local long-term care ombudsmen advocate for individuals in nursing homes and other types of long-term care facilities. The roles and responsibilities of these entities, and sometimes other advocates as well, vary considerably from state-to-state. In some states their roles overlap; in others, there are gaps in service. The issues are compounded by a chronic shortage of resources and complex questions about how each entity reconciles confidentiality requirements with legal and ethical reporting duties. These factors may in turn reduce the effectiveness of the elder advocacy and protection efforts.

2. *Increasing the Number of Geriatrics-Trained Health Professionals* HHS shall institute programs designed to increase the number of

trainees and workers in all relevant professions intended to meet the needs of older people, including physicians, nurses, social workers, therapists, and nurses aides. In addition to the provisions set forth in the long-term care section below, the Secretary shall specify provisions obligating geriatric training time under the National Health Corps Loan Repayment Program (i.e., providing for loan forgiveness for educational debt incurred by the geriatric trainee).

Background and Justification—Among the fundamental issues contributing to elder abuse, neglect, and exploitation is the decline in physical function and mental cognition often correlated with increasing age. Studies have shown that health professionals who receive training in geriatric-specific care can prevent and sometimes reverse aging-related conditions and thus delay dependency and vulnerability, which put seniors at higher risk for abuse, neglect, and exploitation. Addressing the paucity of health professionals with geriatric expertise is thus a core elder abuse prevention issue.

3. *Reducing Family Elder Abuse and Neglect* The Centers for Disease Control (“CDC”) shall evaluate how best to approach elder justice efforts from a public health perspective, including research and evaluation studies designed to examine and reduce elder abuse, neglect, and exploitation committed by family members and relatives. The agency, in collaboration with the National Institute on Aging, the Administration on Aging, the APS Office, and other relevant entities, shall develop systems to: monitor the frequency of elder abuse in families, determine modifiable risk factors, determine consequences associated with elder abuse in the family setting, and develop prevention strategies. The effectiveness of specific interventions will be evaluated and best practices will be recommended by the agency.

Background and Justification—By some estimates, up to ninety percent of the elder abuse in domestic and community settings is committed by someone related to the victim. This troubling statistic suggests that more needs to be done in domestic settings to reduce elder abuse, neglect, and exploitation. Since 1983, the CDC has studied violence-related injuries as part of its overall research protocol in public health. CDC’s method for looking at violence from a public health perspective provides a unified framework for developing relevant information and transferring that information into effective action. The National Center for Injury Prevention and Control’s current

studies on family and intimate violence prevention provide a model for creating programs aimed at preventing elder abuse in the home and community.

F. IDENTIFYING THE SPECIAL NEEDS OF UNDERSERVED POPULATIONS—RURAL, RACIAL AND ETHNIC MINORITIES, AND INDIAN ELDERS

HHS and DOJ shall make grants and create special programs to identify, address, and make recommendations for how to meet the special needs of underserved elder populations.

1. *Meeting the Special Needs of Elderly Americans in Rural Settings* HHS and DOJ shall make grants and fund programs designed to meet the needs of older people living in rural locations, including the needs of their informal caregivers. Pilot programs shall be funded that test strategies for decreasing isolation and addressing the needs for at-risk rural elders. These programs shall include training for informal caregivers and credit classes offered at local high schools and colleges relating to issues of frail elders and their caregivers. In addition, funding will provide incentives for health workers to practice in rural communities, train volunteers to serve as outreach workers to train others, and under the auspices of the National Elder Justice Library this will develop a rural “tool box” of training, technical assistance, and promising practice materials.

Background and Justification—Older persons living in rural areas may face additional risk of mistreatment. Delivery of elder services are particularly challenging in rural communities where the low population density combined with lack of service access creates barriers to receiving care. Informal caregiving by family and friends is particularly prevalent in rural areas, where it occurs more than seventy percent of the time. Finding ways to assess reimbursement schemes and other ways to support such informal caregiving is particularly important to serving rural elders who are at-risk. It is important to find ways to reach out to informal rural caregivers to assure that they have the information, education, skill training, and respite and ongoing support necessary to properly care for a frail and impaired elder. Similarly, in the data collection provided for above, the systems should accurately document the circumstances of elders and their informal caregivers.

2. *Meeting the Special Needs of Minority Populations* HHS and DOJ shall make grants available and fund programs designed to meet the needs of ethnic minority seniors. This shall include grants to study and pilot projects that are culturally and linguistically appropriate to meeting the needs of at-risk minority elders. “Tool boxes” of training, technical assistance, and promising practice materials shall be developed that are culturally and linguistically appropriate for various specific minority populations, to assist them in addressing elder abuse, neglect, and exploitation. Special grants shall be provided to translate the necessary materials included in such tool boxes. In addition, tool boxes with training, technical assistance, and promising practice materials deemed to be most effective shall be translated for use by various non-English speaking populations.

Background and Justification—Ethnic minority elders often are at greater risk of poor health, social isolation, and poverty. Currently, minority seniors comprise over 16.1% of all Americans sixty-five and older and their number is expected to increase dramatically—an increase of 217% compared to an increase of 81% in the older white population between 1999 and 2030. Minority elders may have a difficult time accessing federally funded programs and services due to a lack of proficiency in English, social isolation, poverty, or other factors. Minority cultural factors may lead to an increased reluctance to report abuse or seek help. Language barriers may preclude at-risk elders from obtaining assistance or services. In addition, victim services, delivery of services, and other responses to abuse must be provided in a culturally competent manner, adapted to the special needs of the populations to avoid compounding the detrimental impact of the abuse itself. Similarly, cultural sensitivity is important in developing ways to detect elder abuse, neglect, and exploitation, as well as in fashioning interventions, treatment, and victim services.

3. *Meeting the Special Needs of Indian Elders* The DOJ and HHS shall provide grants to Indian Tribes to provide necessary services relating to elder abuse, neglect, and exploitation. These services will include: gathering information and current analysis of elder abuse among American Indians; identifying noteworthy practices and experiences related to addressing elder abuse, particularly those that have been developed or otherwise tried by tribal organizations or have been targeted to Indian elders; and disseminating this informa-

tion broadly throughout tribal jurisdictions and to those with a particular interest in Indian seniors. No other federal program, including those under the Indian Health Service or the Bureau of Indian Affairs, provides funding for the purpose of preventing, treating or otherwise addressing elder abuse among American Indians.

Background and Justification—Despite the lack of research and quantifiable data regarding abuse of Indian seniors, particularly with regard to family-based abuse and violence, all factors indicate that it is a serious problem. Tribal officials, health and social services providers, including directors of Title VI under the Older Americans Act and other elder programs, as well as elders themselves, report that physical, emotional, and financial abuse of elders exists and seems to be growing as a significant concern in tribal jurisdictions. The admission that one has been victimized by other family members, including children, is exceptionally painful for anyone to admit. This is especially true among Indian communities, which universally adhere to a strong historical ethic of “honoring” elders. As an initial step, it would be useful for tribes to know more about elder abuse in tribal jurisdictions and about efforts initiated by other tribes to address elder abuse within their own communities.

G. INCREASING PUBLIC AWARENESS ABOUT ELDER ABUSE, NEGLECT, AND EXPLOITATION

The DOJ and HHS shall provide a grant to mount a multi-media campaign designed to raise awareness of the many different types of financial schemes that target elders and often leave them impoverished and sometimes homeless. Another grant shall be made to pilot test media campaigns in specific areas to ascertain whether they are effective in raising the public’s awareness about the various types of elder abuse and neglect and what to do if someone suspects that it may have occurred or be occurring, and how to prevent it.

Background and Justification—Elders are the targets of a wide variety of financial scams often perpetrated by family members, caregivers, or acquaintances. The vehicle for the scam may be a sweepstakes, the lottery, telemarketing, Internet, credit card, predatory lending, home repair fraud, or other means. But the result is often the same; elders are left destitute, sometimes losing everything they own. A media campaign to educate would-be victims and those who care about them could be very useful to preventing others from being victimized. Media campaigns have, in other contexts, been shown to be

very effective in raising awareness and changing behavior. Similar efforts have been pursued to raise awareness about child abuse and domestic violence, among other issues. The campaign should be designed to educate the public about elder abuse and neglect, disseminate information about prevention, and describe what to do if one suspects elder mistreatment.

H. MODEL STATE LAWS AND PRACTICES

The DOJ shall fund the examination, report, and recommendations relating to a broad array of state laws as they relate to elder abuse, neglect, and exploitation. The report and recommendations shall be submitted to the Senate Special Committee on Aging to assist Congress in determining whether to enact legislation in the future on model state laws and practices or other subjects as they relate to elder justice. State laws and practices shall be examined on issues including the following: (1) definitions of “elder,” “abuse,” “neglect,” and “exploitation,” and related terms; (2) mandatory reporting laws; (3) evidentiary rules (including televised testimony); (4) laws requiring immediate reporting of all nursing home deaths to the county coroner or someone else; (5) guardianship laws; and (6) banking laws. In addition, the study shall examine enforcement practices and other activities as they relate to those laws. For example, it could entail the existence of memoranda of understanding among relevant parties providing for procedures for information sharing and preserving the necessary confidentiality. The reports resulting from these studies shall identify particularly effective laws and practices so that other states may replicate them. Furthermore, the studies should identify whether those with expertise and experience in elder justice issues believe laws or practices are needed which would be helpful in effectively preventing or addressing elder abuse, neglect, and exploitation.

Background and Justification—State laws relating to elder abuse, neglect, and exploitation vary considerably from state-to-state. Similarly, the states’ enforcement procedures and other practices differ considerably. To date there has been no comprehensive description and comparative analysis of these laws and practices, nor has a compendium of model state laws been prepared. Thus, the report should include recommendations to inform other states contemplating what types of legislation to enact and determining policy and practices to

implement. Indeed, state legislatures often seek this type of assistance. The types of laws to be reviewed include:

Definitions: A threshold issue relates to the definitions—defining, for example, elder abuse, neglect, and exploitation. Greater uniformity among definitions and laws would greatly assist in information gathering, training, research, clinical practice, interventions, and other efforts.

Mandatory Reporting Laws: Laws mandating reporting of elder abuse, neglect, and exploitation to APS exist in all but six states. These laws differ, however, in how they define a mandated reporter, to whom reports should be made, what types of follow up are required once a report is made, what should be reported, and the consequences of failing to report. In addition, there is considerable divergence of views about the efficacy and purpose of reporting laws in general, which also should be examined.

Evidentiary Laws: Because older victims often are frail, and sometimes suffer from diminished capacity or significant illness, this review should focus on what evidentiary rules accommodate the circumstances and needs of older victims and the need to preserve witness testimony. Examples may include permitting televised testimony under certain circumstances. Assuring that a person with dementia may testify at the time of day when they are most lucid or providing for transportation and other assistance also may have a significant impact on the outcome of the case and on the extent to which the older victim is further traumatized by the legal procedures surrounding the original event.

Reporting of Nursing Home Deaths: A 1999 Arkansas statute requires reporting of all deaths occurring in nursing homes or within five days of discharge from a nursing home to the county coroner. Based on anecdotal observation, this law appears to have coincided with a decrease in decubitus ulcers and other indicators of neglect in Pulaski County, Arkansas, where the appointed coroner has vigorously enforced the law. A study should be done to test this hypothesis and to examine whether this law should be replicated in other states.

Guardianship and Power of Attorney Laws: Court-appointed guardians are useful in cases where individuals have lost the cognitive capacity for decision making. However, establishing legal guardianship can be expensive and time-consuming. Also, like

power-of-attorney, some guardians betray and exploit those whose fiduciary interests they are charged with representing. State laws and procedures for establishing, monitoring, and providing for guardians in the case of financial need vary. This study will examine guardianship laws to identify those that most effectively protect vulnerable elders while not imposing too onerous a burden on others. Similarly, in most jurisdictions there are few protections on powers of attorney.

Banking Laws: State laws, such as those in Oregon, Idaho, Illinois, Florida, and other states should be studied to determine their success in preventing elder fraud and exploitation. Some states provide financial institutions the ability to make contact with the appropriate state or federal agencies concerning any suspected violation of law. These provisions allow the reporting institution to disclose customer financial records to the relevant state or federal agency when financial exploitation is suspected, and immunize the financial institution from liability for loss, damage, or injury arising out of, or in any way related to, the report or release of information pertaining to the suspected violation of law. Banking laws should be examined as they relate to elder financial exploitation, both in terms of providing a potential model for other states and also as a potential model for federal consideration.

I. THE ELDER JUSTICE INNOVATION FUND

This fund shall be available to support approaches to prevent and address elder abuse, neglect, and exploitation that are innovative and perhaps even unconventional.

III. INCREASING SECURITY, COLLABORATION AND CONSUMER INFORMATION IN LONG-TERM CARE

A. IMMEDIATE REPORTING TO LAW ENFORCEMENT OF CRIMES OCCURRING IN FEDERALLY FUNDED LONG-TERM CARE FACILITIES

Any employee, contractor, owner, or operator employed by or consulting for a long-term care provider who receives more than \$10,000 federal dollars annually shall report immediately to the appropriate law enforcement entity or entities allegations of a crime where the victim is a resident of or under the care of that long-term care provider.

Background and Justification—Recent reports confirm that there is a growing concern that some recipients of long-term care services are abused by individuals to whom their care has been entrusted. Some problems that occur between a provider of care and a recipient of care are best handled within a given facility and do not require the involvement of law enforcement. But too often, serious crimes are not immediately reported to law enforcement, but instead are handled internally by reporting to the state survey agency. The GAO recommended that the federal government facilitate the prompt reporting, investigation, and prevention of abuse to help ensure the protection of nursing home residents. In addition, the absence of prompt reporting to law enforcement may result in the compromise of forensic evidence, rendering it more difficult to establish what occurred and whether a crime was committed.

B. CRIMINAL BACKGROUND CHECKS FOR ALL INDIVIDUALS WITH ACCESS TO RESIDENTS IN FEDERALLY-FUNDED LONG-TERM CARE

All persons seeking employment with a long-term care provider that receives at least \$10,000 a year in federal funding are required to undergo criminal background checks using the national database maintained and operated by the Federal Bureau of Investigation (“FBI”). Follow-up criminal background checks are required every five years for current employees. The HHS Office of Inspector General will coordinate submission of the background checks to the FBI. The OIG will, in coordination with the FBI, promulgate regulations providing guidance about what is an “excludable offense” that warrants eliminating candidates for employment.

Background and Justification—Under current state laws, many long-term care providers are required to do criminal background checks within state borders. Many abusers, however, “state hop” by crossing state lines to seek employment. To the extent criminal background checks are not conducted on a nationwide basis, it is more difficult to protect residents from abuse by individuals who may move between states for employment. Several federal laws permit, but do not require, providers to conduct criminal background checks. Under Public Law 105-277, the FBI cannot charge more than fifty dollars or the actual cost of the criminal background check, whichever is less. The FBI reports that it can conduct the background searches in approximately 177 minutes. But few providers actually do nationwide

background checks under the statute. Only two states have accessed the FBI system since the passage of this law in 1998, in part because many states are reluctant to act as a conduit, and in part because few nursing homes and home health care agencies have taken advantage of this law.

HHS/OIG will coordinate all background checks for applicants, alleviating the need for states to act as a conduit. Other members of Congress have introduced innovative legislation to address criminal background checks, including the creation of a National Center to process all types of FBI criminal background checks. Were that bill enacted, the National Center instead of OIG would be the conduit. HHS/OIG or the National Center—whichever one is the coordinating entity—would be charged with promulgating guidance on what should be an “excludable offense.”

C. ASSURING SAFETY OF RESIDENTS WHEN NURSING FACILITIES CLOSE

Any nursing facility must provide sixty days advance notice of closure and assure the safe, well-planned transfer and adequate relocation of all residents prior to closure. Failure to do so would subject any facility owners, partial owners, and/or managers to personal liability (monetary penalty and/or exclusion). These sanctions may be adjusted downward depending on the degree of knowledge and culpability. The notice of closure shall be provided, in writing, to the Centers for Medicare and Medicaid Services (“CMS”) and to the relevant state regulatory agency or agencies. This provision will permit CMS and the state agencies to monitor and assure the orderly and well-planned transfer of frail and elderly residents who must be moved as a result of the facility closure.

Background and Justification—The closure of a facility is a significant event in the lives of its residents and, if not handled properly, can result in serious decline and even death of residents. The closure of a nursing facility, and particularly the sudden closure of a nursing home chain, requires a significant government and community response. Thus, advance notice and orderly, well planned, and satisfactory transfer of residents is critical to the residents’ health and well-being. Although both the long-term care ombudsmen and the states have responsibility for transferring residents in the case of a facility closure, that task is made much more difficult if they do not have advance notice of such closure. It is thus imperative that facilities factor

into their plans the orderly and adequate transfer of residents in the event of closure and be prohibited from closing suddenly. Finally, this provision will also provide facility staff with assurance that they will have at least sixty days notice prior to a facility closure.

D. ENHANCING LONG-TERM CARE STAFFING

1. *Enhancing Recruitment and Retention of Direct Care Staff* Grants shall be awarded to develop programs that provide incentives for more individuals to enter the profession of long-term care. Alternatively, tax incentives will be available for eligible employers and employees to encourage more individuals to work in long-term care. Examples of such programs include, but are not limited to the following:

a. *Coordinating with Other Programs* HHS shall, coordinating with the Department of Labor, develop a program that provides targeted, ongoing use of existing programs such as "Welfare to Work," Temporary Assistance for Needy Families ("TANF"), and Work Opportunity Tax Credits ("WOTC") to recruit and train potential workers to address the workforce needs in long-term care facilities;

b. *Career Ladders and Wage or Benefit Increases* Grants shall be awarded for programs that provide for continuing training and varying levels of certification with an accompanying increase in wages or affordable health insurance and/or other benefits for direct care staff, based on observed clinical care practices and amount of time spent providing direct care.

c. *Incentives for Sustained Work in Long-Term Care* HHS shall fund a program providing for loan forgiveness for direct care staff who work in long-term care facilities for at least five years and undertake higher education opportunities either simultaneously to working in long-term care or subsequent to completing such work. Alternative types of bonuses shall be made available to long-term care workers who remain in the field for five or more years. While they do not have to remain with the same provider for that period, they must remain in the long-term care field as defined in other sections of this proposal.

2. *Improved Management Practices* Grants shall be funded to provide training and technical assistance to eligible entities who create and institute management (including but not limited to administrators, directors of nursing, staff developers, and charge nurses) practices that are demonstrated to reduce turnover rates in facilities. Established training materials shall be disseminated and housed in the Elder Justice Library (discussed above) so that they are available to other providers. These practices include:

- the institution of basic high performance human resource policies including improved wages and benefits based on job reviews
- motivational and thoughtful work organization practices
- creating a workplace culture that respects and values caregivers and their needs
- promoting culture change that respects residents and improves care
- other “programs” that encourage high quality care

One such “program” would be the implementation of a training requirement for certified nurse aides that is over and above the current seventy-five hours required. This additional training should be part of a continuing education program that is initiated after the certified nurse commences work and should include on-the-job training.

Background and Justification—Currently, there is a dearth of individuals available to care for our nation’s elderly. This shortage is apparent not only in skilled nursing facilities, but in all long-term care residential settings and home health care programs. What is viewed today as a mere workforce shortage will be described in terms of crisis proportions in the not-so-distant future. In the year 2000, for every individual over the age of eighty-five, there were thirty-eight people age twenty to sixty-four. By 2050 that ratio will change dramatically—instead of thirty-eight to one that ratio will be eleven to one. The workforce shortage is not the only challenge. By encouraging long-term care providers to offer innovative programs, the pool of eligible employees might increase exponentially.

Over a decade ago, Congress called on HHS to study the relationship between nursing home staff and quality of care for nursing home residents. HHS’ two-phase study, *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes*, indicated that factors such as staff-resident ratios, management practices, and retention rates have a

direct link to quality of resident care. Though these studies were limited to nursing homes, the general findings can be extrapolated to include many residential care facilities for the elderly and disabled.

Additionally, the Institute of Medicine's ("IOM") 2001 report, *Improving the Quality of Long-Term Care*, states that in 1997 the turnover rate in nursing homes was ninety-three percent for nursing assistants. And, as the IOM goes on to point out, this statistic carries increased significance in a setting where individuals are being cared for—with a ninety-three percent staff turnover rate it is difficult to foster meaningful relationships between staff and residents. The IOM recommended that the federal government “undertake measures to improve work environments including competitive wages, career development opportunities, work rules, job design and supervision that will attract and retain a capable, committed work force.”

The proposals outlined above aim to improve quality of care for individuals living in long-term care facilities by accomplishing three goals: improve recruitment of direct care staff; decrease turnover rates of direct care staff; and improve management practices.

E. LONG-TERM CARE CONSUMER CLEARINGHOUSE (“LTCCC”)

A long-term care consumer clearinghouse shall be established within HHS. The Clearinghouse will provide detailed information to consumers who have questions when making choices about long-term care. To the extent such resources or resource centers already exist for certain topics, links should be provided to those resources.

Background and Justification—Currently there is no centralized repository of information to assist those trying to make choices about long-term care. This long-term care clearinghouse would house comprehensive information in a consumer-friendly form for those attempting to make choices about long-term care. For example, families trying to make decisions about whether they can continue to care for a loved one at home might be interested in how to get assistance at home and in caregiver tips. They also may wish to learn about the different options in residential care, ranging from group homes to nursing homes. The clearinghouse website would provide hyperlinks to CMS sites providing information about nursing homes generally, the Medicare and Medicaid programs, and information about specific facilities. It also should include family and resident satisfaction data.

Unfortunately, definitions and other provisions relating to residential care facilities other than nursing homes vary considerably from state-to-state. The clearinghouse shall compile what information is currently available from the states and other sources regarding assisted living, board and care, congregate care, home health care, and other long-term care providers. Information based on the findings of the IOM study detailed below should be used to supplement the information about residential care.

F. SUPPORTING THE LONG-TERM CARE OMBUDSMAN PROGRAM

The long-term care ombudsman program shall be provided with additional dedicated funds and measures to strengthen the long-term care ombudsman office. The activities of that office shall include grants to conduct evaluations and pilot studies relating to various long-term care ombudsman programs and methods.

Background and Justification—The Older Americans Act (“OAA”) created the long-term care ombudsman program in 1978. Each state has state and local ombudsmen who are responsible for representing the interests of nursing home residents. Some ombudsmen are paid; others are volunteers. Many work for state departments of health, aging, or other government entities. Most of the ombudsmen programs, however, are underfunded.

G. DEVELOPING CONSUMER INFORMATION ABOUT THE LONG-TERM CARE CONTINUUM

The IOM shall conduct a study that will assess residential care options other than nursing facilities. Among other issues, the study shall examine particular concerns of the consumer, such as definitions, prices, level of services provided, oversight and enforcement provisions, and admission and discharge criteria. The report shall be delivered to the Elder Justice Coordinating Council and to the Senate Special Committee on Aging so that the Congress may determine what if any further steps should be taken in this area to assure quality long-term care.

Background and Justification—The increasing number of older and disabled Americans in recent decades has led to a proliferation of long-term care residential facilities. There are a variety of types of long-term care facilities. While “skilled nursing facilities” are specifically defined in federal law, other types of residential facilities are not as specifically enumerated and are defined quite differently from state

to state. For example, a facility that qualifies as “assisted living” in one state may not fall under that same category under a different state’s regulations. Consumers, often during difficult times, are confronted with a maze of decisions and little objective information to provide guidance. A prospective consumer’s failure to make appropriate initial decisions about the proper types of long-term care often has dire consequences. A comprehensive study is necessary to be able to provide complete and objective information to consumers and policymakers.

H. COLLABORATIVE EFFORTS TO ENHANCE COMMUNICATION AMONG THE PARTIES ON HOW TO PROMOTE QUALITY AND PREVENT ABUSE AND NEGLECT

Funding shall be provided for pilot testing multi-disciplinary community groups formed to develop collaborative and innovative approaches to improving long-term care. For example, such funds could be sought to support community groups consisting of entities including nursing home providers, advocates, ombudsmen, APS, surveyors, state licensing entities, law enforcement, family councils, resident representatives, Certified Nurses Assistants, Registered Nurses, and others.

I. COLLABORATIVE EFFORTS TO DEVELOP CONSENSUS AROUND THE MANAGEMENT OF CERTAIN QUALITY-RELATED FACTORS

Funding shall be provided to create multi-disciplinary groups to address certain specific quality-related subjects. The group shall do the following: set a goal, look at all relevant research and data, identify best practices, determine the best way to operationalize those best practices in a practical and feasible manner, and determine an effective manner of distribution. This model was useful in the past relating to reduction of restraint use in nursing homes. A few topics should be chosen to determine whether this is an effective model and, if so, how best to replicate it. Among the topics to be studied in this context is the issue of resident-to-resident abuse.

J. NEW FEDERAL CAUSE OF ACTION FOR ELDER ABUSE AND NEGLECT

A new federal cause of action will permit the DOJ to pursue criminal and civil cases against a person or entity that abuses or neglects three or more residents in a nursing facility that receives at least

\$10,000 federal dollars a year, resulting in significant physical or psychological harm to at least one resident. Civil and criminal penalties will be authorized, depending on the severity of harm, the number of people harmed, and the financial means of the defendant.

Background and Justification—Currently there is no federal cause of action for abuse or neglect. To date, egregious failures of care have been pursued civilly under the False Claims Act, a financial fraud statute, and criminally under traditional criminal health care fraud theories. CMS administrative causes of action arise under the provider agreement and therefore may be enforced only one facility at a time, and not against a chain or corporate entity. Moreover, the backlog at HHS Departmental Appeals Board often results in discounts in Civil Money Penalties and delays in the resolution.

IV. EVALUATION—DETERMINING WHAT WORKS

Too often, projects in the area of elder abuse, neglect, and exploitation have been funded without regard to whether they will be deemed effective. Similarly, too few efforts in this area include a validated evaluation component designed to measure efficacy. Given the paucity of data in the field of elder abuse, neglect, and exploitation, it is imperative to leverage resources where they will do the most good. Thus, all grants or other funding mechanisms authorized under this legislation should contain a validated evaluation component to measure the effectiveness of the efforts. Funding for such evaluations shall be provided either as a stated percentage of the project or as a separate grant for a particular project or group of projects. In addition, grants shall be available to conduct a validated evaluation of ongoing efforts, other than those funded under this legislation.

Individuals selected from HHS and DOJ with expertise in evaluation methodology shall review the evaluation proposals to determine whether they are adequate to gather meaningful information, and, if not, advise the applicant why the proposal was not funded and assist applicants in modifying evaluation proposals.