

THE SILENT GENERATION: REMOVING BARRIERS TO ADDRESSING INTIMATE PARTNER VIOLENCE AMONG THE ELDERLY

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Intimate partner violence (“IPV”) has persisted throughout human history. It has spanned across nearly every race, ethnicity, sexual orientation, gender, class, and religion. It should come as no surprise that it also spans across partners of all age groups. And yet, elderly couples are not often associated with this type of violence. Narrowly focusing research and possible solutions toward younger and middle-aged couples unfortunately overlooks a segment of victims: the elderly. These elderly victims are habitually left to suffer unnecessary abuse because, in part, the system that society trusts to identify and assist them is frequently ill-equipped to actually do so. As history has shown, there may never be a solution that reaches all victims and solves all problems. Nevertheless, we would be remiss if we did not strive to be as close to that point as possible. When a victim finds the courage to reach their hand out, our system must be able to see it, grab it, and help the victim out of an unfortunate situation. This Note discusses ways to raise awareness of elderly IPV and to explore options to begin addressing the issue. In sum, it recommends an overhaul of IPV screening procedures for the elderly, altering and re-authorizing the Violence Against Women Act, and a removal of systemic barriers to relief.

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I. Introduction

At sixty-eight years old, Marie Burke considered her marriage of over forty years to be a rather happy one.¹ Marie and her husband had children and grandchildren, and they were looking forward to retiring together.² Unfortunately, her husband suffered a stroke, and Marie chose to retire early to become his full-time caretaker.³ Shortly after returning from the hospital, her husband began acting hostile towards her.⁴ He relentlessly harassed her over the most trivial of purchases, timed her trips from their home, and eventually forbade her from leaving their home for any non-essential trips.⁵ The thought of these behaviors constituting intimate partner violence (“IPV”) never crossed Marie’s mind, as she thought that abuse only happened to younger women.⁶ While visiting her doctor, she saw a poster in the bathroom listing abusive patterns of behavior—behavior that was unfortunately all too familiar to Marie.⁷ She declined to seek any help though, as Marie worried that it would tear their marriage and family apart.⁸ She worried about a fight over their home, what their children and grandchildren would think, and especially about finding someone to take care of her husband’s special medical needs.⁹ Marie endured another five years of violence at the hands of her partner before he ultimately passed away of a second stroke.¹⁰

As countless partners like Marie have discovered, IPV can be prevalent in a couple’s golden years. A 2017 study found that 8 percent of women who were killed by their partner or ex-partner in the United Kingdom were sixty-six and older.¹¹ Another study found that elderly couples are more likely to experience IPV than younger couples, at rates

1. Dawn Foster, *Older women are victims of domestic violence, too*, THE GUARDIAN (Apr. 25, 2018, 1:00 AM), <https://www.theguardian.com/society/2018/apr/25/domestic-violence-abuse-older-couples-increase>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. JULIA LONG ET AL., THE FEMICIDE CENSUS: 2017 FINDINGS 28 (WOMEN’S AID 2018), <https://www.womensaid.org.uk/femicide-census-of-2017/>.

of 40 percent and 28 percent respectively.¹² In a study analyzing substantiated claims of abuse among elderly victims, 11 percent of the abuse claims came at the hands of a partner or spouse.¹³ Despite this evidence, elderly IPV is swept under the rug, and the reason is straightforward: no one wants to talk about grandma abusing grandpa.¹⁴

Although discussing IPV is never easy, it can be particularly difficult in the context of the elderly.¹⁵ Still, there are systemic reasons why elderly IPV remains hidden from our view.¹⁶ The current system fails to capture and address the true breadth of IPV among the elderly population.¹⁷ For instance, the United States Preventive Services Task Force (“USPSTF”) does not recommend screening for IPV among elderly patients, despite recommending screening for women of childbearing age.¹⁸ Non-clinical options like women’s shelters are ill-equipped to handle the special needs of elderly victims, especially considering the prevalence of limited mobility and health issues.¹⁹ Limited mobility or health issues may prevent elderly victims from getting to court to obtain orders of protection against their abusers.²⁰ On top of those difficulties, elderly IPV may take on different forms than it does with

12. SAFE LIVES, SAFE LATER LIVES: OLDER PEOPLE AND DOMESTIC ABUSE 5–6 (2016), <http://safelives.org.uk/sites/default/files/resources/Safe%20Later%20Lives%20-%20Older%20people%20and%20domestic%20abuse.pdf> [hereinafter SAFE LIVES].

13. NAT’L COMM. FOR PREVENTION ELDER ABUSE & NAT’L ADULT PROTECTIVE SERV.’S ASS’N, THE 2004 SURVEY OF STATE ADULT PROTECTIVE SERVICES: ABUSE OF ADULTS 60 YEARS OF AGE AND OLDER 20 (2006), <http://www.napsa-now.org/wp-content/uploads/2012/09/2-14-06-FINAL-60+REPORT.pdf>.

14. *See id.*

15. *See* Karen A. Roberto et al., *Intimate Partner Violence in Late Life: An Analysis of National News Reports*, 25 J. ELDER ABUSE AND NEGLECT 230 (2013), <https://doi.org/10.1080/08946566.2012.751825>.

16. *See id.*

17. *See id.*; SAFE LIVES, *supra* note 12.

18. U.S. PREVENTIVE SERV. TASK FORCE, FINAL RECOMMENDATION STATEMENT: INTIMATE PARTNER VIOLENCE, ELDER ABUSE, AND ABUSE OF VULNERABLE ADULTS: SCREENING (2018), <https://www.uspreventiveservicestaskforce.org/Page/Document/RecommendationStatementFinal/intimate-partner-violence-and-abuse-of-elderly-and-vulnerable-adults-screening1> [hereinafter USPSTF 2018 RECOMMENDATION].

19. Ashley Slye & Bonnie Brandl, *Recognizing the Emergency Housing and Shelter Needs of Older Survivors on World Elder Abuse Awareness Day*, NAT’L NETWORK TO END DOMESTIC VIOLENCE (June 14, 2017), https://nnedv.org/latest_update/housing-shelter-world-elder-abuse/.

20. INST. MED. AND NAT’L RSCH. COUNCIL, ELDER ABUSE AND ITS PREVENTION: WORKSHOP SUMMARY 101–04 (2014), <https://www.nap.edu/read/18518/chapter/17> [hereinafter INST. MED.].

younger victims, such as withholding medications or abusing a durable power of attorney.²¹

The goal of this Note is to raise awareness of elderly IPV and to explore options to begin addressing the issue. Part II of this Note will present the background on IPV, how it differs from the more general forms of domestic violence, and the reasons it is surprisingly prevalent among the elderly. Part III will analyze the systemic barriers leading to under-reporting and under-engagement of elderly IPV and will go into detail about why options available to younger victims fall short when it comes to elderly victims. Part IV will recommend an overhaul of IPV screening procedures for the elderly, a removal of systemic barriers to relief, and the alteration and re-authorization of the Violence Against Women Act. Finally, Part V will offer some closing thoughts on the subject.

II. Background

Often synonymous with domestic violence, intimate partner violence refers to various forms of abusive behavior that one individual inflicts on another in the context of an intimate relationship.²² More specifically, IPV refers to any behavior within an intimate relationship that causes physical, psychological, or sexual harm to those in the relationship.²³ Domestic violence tends to encompass all forms of violence among the entire family and is a far broader category than IPV.²⁴ Intimate partner violence is more widespread and costly than many might realize.²⁵ In the United States, an average of twenty people experience intimate partner violence every minute.²⁶ Seventy-two percent of all

21. Elizabeth O'Brien, *Power of attorney: It's easily abused*, MARKETWATCH (Mar. 19, 2013 7:01 AM), <https://www.marketwatch.com/story/power-of-attorney-its-easily-abused-2013-03-19>.

22. Ron Wallace, *Domestic Violence and Intimate Partner Violence: What's the Difference?*, PUBLIC SAFETY (Oct. 15, 2015), <https://inpublicsafety.com/2015/10/domestic-violence-and-intimate-partner-violence-whats-the-difference/>.

23. WORLD HEALTH ORG., WORLD REPORT ON VIOLENCE AND HEALTH 1, 89 (Etienne G. Krug et al. eds., 2002), https://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf [hereinafter 2002 WORLD REPORT ON VIOLENCE AND HEALTH].

24. *Id.*

25. *See id.* at 70, 111.

26. Michele C. Black et al., *National Intimate Partner and Sexual Violence Survey*, CTRS. FOR DISEASE CONTROL AND PREVENTION (2011), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

murder-suicides involve intimate partners.²⁷ Across all age groups, nearly 5.3 million victimizations (instances of IPV) occur each year, with the annual costs of IPV totaling over \$5.8 billion, with \$4.1 billion spent on medical and mental treatment alone.²⁸

This Note focuses solely on the IPV subset of domestic violence, and specifically among the elderly population. This Part will explain IPV's origins, describe common manifestations of IPV, and detail why elderly partners may be unexpectedly susceptible to IPV.

A. Definition and History of IPV

IPV includes physical acts such as slapping, punching, kicking, and shoving; psychological abuse such as intimidation, humiliation, and belittlement; forced sexual intercourse; and various forms of control such as isolation from friends and family, over-monitoring the victim's location, and restricting access to assistance.²⁹ These examples are far from exhaustive, but they provide a general idea of the types of common behaviors found in cases of IPV.³⁰ IPV accounts for 15 percent of all violent crimes in the United States and that statistic only accounts for IPV that has been reported to the authorities.³¹ Nearly half of these instances go unreported.³² Physical violence is often accompanied by psychological abuse, sexual abuse, or both.³³ People who are the recipients of physical aggression from their partner are often subjected to repeated abuse.³⁴ IPV does not discriminate, and is not contained within any age range, country, ethnicity, sexual orientation, or gender.³⁵

27. VIOLENCE POL'Y CTR., AMERICAN ROULETTE: MURDER SUICIDE IN THE UNITED STATES 5 (4th ed. 2012), <http://www.vpc.org/studies/amroul2012.pdf>.

28. See NAT'L CTR. INJURY PREVENTION AND CONTROL, CTRS. DISEASE CONTROL AND PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 32 (2003), <https://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf> [hereinafter NAT'L CTR. INJURY PREVENTION AND CONTROL].

29. 2002 WORLD REPORT ON VIOLENCE AND HEALTH, *supra* note 23.

30. See *id.*

31. *Statistics*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, (citing Jennifer L. Truman & Rachel E. Morgan, NONFATAL DOMESTIC VIOLENCE, 2003–2012, BUREAU JUST. STAT. (2014), <https://www.bjs.gov/content/pub/pdf/ndv0312.pdf>), <https://ncadv.org/statistics> (last visited Nov. 9, 2020).

32. OFF. FOR VICTIMS CRIME, INTIMATE PARTNER VIOLENCE FACT SHEET (2018), https://ovc.ncjrs.gov/ncvrvw2018/info_flyers/fact_sheets/2018NCVrw_IPV_508_QC.pdf.

33. 2002 WORLD REPORT ON VIOLENCE AND HEALTH, *supra* note 23.

34. *Id.*

35. See generally *id.*

IPV is certainly not a new phenomenon.³⁶ Domestic violence, generally, has persisted throughout history and across cultures.³⁷ Understanding how IPV came to be recognized requires a historical analysis of the recognition of domestic violence as a general concept. The movement to recognize and address domestic violence in the United States gained traction in the early 1970s, when women's rights groups campaigned to raise awareness of the issue.³⁸ Only when attention was finally directed towards issues like elder abuse and domestic violence did people start to recognize the joint problem of elderly partner violence, but even then it was often likened to child abuse.³⁹ Nevertheless, government and non-profit agencies started to provide emergency shelters and other services for victims of domestic violence.⁴⁰ The emergence of these shelters and resources shined a light on the subject and allowed for the scientific community to study the phenomena in greater detail, as the victims were now easier to find and assess.⁴¹ With the rise in research came a rise in public awareness, which led to the 1994 Violence Against Women Act ("VAWA").⁴² Since its inception, VAWA has been re-authorized three times and has been at the center of numerous cases, most notably in *United States v. Morrison*, in which the Supreme Court invalidated certain portions of VAWA but left the operative funding portions intact.⁴³

VAWA was crucial to bringing IPV out of the shadows, organizing community efforts to address the problem, and providing crucial funding to support programs.⁴⁴ Prior to VAWA's passage, much of the

36. Brian K. Payne, *Training Adult Protective Services Workers About Domestic Violence*, 14 (10) VIOLENCE AGAINST WOMEN 1199, 1200 (2008), <https://journals.sagepub.com/doi/pdf/10.1177/1077801208322702>.

37. Roxanne Dryden-Edwards, *Domestic Violence*, MEDICINENET, https://www.medicinenet.com/domestic_violence/article.htm#what_is_the_history_of_domestic_violence (last visited Nov. 9, 2020).

38. Wallace, *supra* note 22.

39. Linda Vinton, *Abused Older Women: Battered Women or Abused Elders?*, 3 J. WOMEN & AGING 5, 6 (1991) (discussing how elderly victims were often looked at like child abuse victims, because of their perceived weakness and frailty).

40. Wallace, *supra* note 22.

41. *Id.*

42. *Id.*

43. *United States v. Morrison*, 529 U.S. 598, 602 (2000); LISA SACCO, CONG. RSCH. SERV., R45410, THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION (2019).

44. Liz Roberts, *Liz Roberts Explains the Impact of the Violence Against Women Act (VAWA)*, SAFEHORIZON (May 23, 2017), <https://www.safehorizon.org/programs/violence-against-women-act-vawa/>.

available support was limited to a web of small, independent non-profits that operated on tight budgets and relied on sparse amounts of volunteers.⁴⁵ VAWA's passage established the federal Office on Violence Against Women ("OVW") and led to an influx of federal funding.⁴⁶ In 2017 alone, OVW awarded over \$450 million in grants, and since its founding, the office has awarded well over \$8 billion.⁴⁷ These funds go to crucial programs such as the National Domestic Violence Hotline; the Legal Assistance for Victims Grant Program, which provides representation for victims of IPV; and the Transitional Housing Grant Program, which helps bring victims stability through victim-oriented temporary housing offering victims a safe place to stay while they determine their next steps.⁴⁸

Despite its benefits, VAWA is facing an uncertain future. VAWA requires periodic re-authorizations, and has not been re-authorized since the Obama administration in 2013.⁴⁹ Although funding for most of VAWA's programs has continued, all formal authorizations of VAWA appropriations expired in 2018.⁵⁰ While a re-authorized version passed in the House of Representatives on April 4, 2019, the Senate declined to consider the bill.⁵¹ Additionally, the Trump administration significantly restricted the definition of domestic violence under

45. *Id.*

46. *Id.*

47. *E.g.*, SACCO, *supra* note 43, at 4; *FY 2017 OVW Grant Awards by Program*, U.S. DEP'T OF JUST., <https://www.justice.gov/ovw/awards/fy-2017-ovw-grant-awards-program> (last visited Nov. 9, 2020).

48. SACCO, *supra* note 43, at 3; U.S. DEP'T OF JUST. OFF. ON VIOLENCE AGAINST WOMEN, OMB NO. 1122-0020, OVW FISCAL YEAR 2020 LEGAL ASSISTANCE FOR VICTIMS (LAV) GRANT PROGRAM (2019), <https://www.justice.gov/ovw/page/file/1218676/download>; U.S. DEP'T OF JUST. OFF. ON VIOLENCE AGAINST WOMEN, OMB NO. 1122-0020, OVW FISCAL YEAR 2020 TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING (2019), <https://www.justice.gov/ovw/page/file/1223791/download>.

49. SACCO, *supra* note 43, at 2.

50. *Id.* at 14–15.

51. *Violence Against Women Act Reauthorization Threatened*, A.B.A., (May 16, 2019) https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/may2019/vawa_update/.

VAWA programs.⁵² Though all states have laws addressing spousal violence, they are not nearly as expansive as VAWA, and many are silent on topics such as screening, training, and protocols.⁵³

VAWA, while providing a great deal of support to the crisis, failed to fully address the dynamics of violence within an intimate relationship. For instance, it operated on a presumption that the abuser-victim roles were gender-specific, typically male-female.⁵⁴ It did not account for female-male, male-male, or female-female violence.⁵⁵ Although it is hard to pinpoint, the concept of using IPV as a way to address broader relationship dynamics came about around the turn of the new millennium.⁵⁶ The recognition of IPV as a concept has allowed society to see beyond the conventional model of domestic violence (a married man and woman) and realize that intimate partner violence can exist regardless of the type of relationship, sexual orientation, age, gender, or marital status.⁵⁷ IPV assigns no roles.⁵⁸

B. Identifying IPV Behaviors

IPV can wear many faces, and as a result, the terminology and classifications surrounding IPV are often confusing, hard to differentiate, and hard to imagine in real-life scenarios.⁵⁹ One way to categorize IPV is by the type of violence, but it is important to remember that an abuser is not constrained to one type.⁶⁰ There is physical abuse, which can be active (using force) or passive (neglect or deliberate withholding of care).⁶¹ Another form is psychological abuse, which is often used to wear down the victim's sense of independence and ego.⁶² An example

52. Natalie Nanasi, *The Trump Administration Quietly Changed the Definition of Domestic Violence and We Have No Idea What For*, SLATE (Jan. 21, 2019, 1:00 PM), <https://slate.com/news-and-politics/2019/01/trump-domestic-violence-definition-change.html>.

53. See NANCY DURBOROW ET AL., *Compendium of State Statutes and Policies on Domestic Violence and Health Care* (2010), available at <http://www.postand-courier.com/app/till-death/assets/d1-38.pdf>.

54. Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).

55. *Id.*

56. Wallace, *supra* note 22.

57. *Id.*

58. *Id.*

59. *See id.*

60. LAWRENCE FROLIK & RICHARD KAPLAN, *ELDER LAW IN A NUTSHELL* 404–06 (7th ed. 2019) (describing broader forms of abuse).

61. *Id.* at 405.

62. *Id.*

of psychological abuse in this context would be threatening to put the victim in a nursing home.⁶³ A third, often overlooked, type of abuse falls under the category of “violation of rights,” which degrades and strips the victim’s rights and can take a number of different forms.⁶⁴ An example of “violation of rights” would be locking the victim in a room, denying them any semblance of privacy, or refusing to let the victim have any contact with third parties.⁶⁵ This type of intimate partner violence is reminiscent of Marie Burke’s story.⁶⁶

Another way to view IPV is to think of it in terms of the situation it takes place in.⁶⁷ In a situation where elderly victims rely on their partner for care, IPV can be a manifestation of a desire to control their partner, possibly to break down the victim’s resistance and make the caregiver’s job easier, or possibly just because the perpetrator enjoys it.⁶⁸ One of the seminal studies of situational IPV was published in late 2006 by Michael P. Johnson, Ph.D. and professor of women’s studies at Pennsylvania State University, in which Johnson attempted to clear the fog and frame out the main types of IPV: intimate terrorism; violent resistance; situational couple violence; and mutual violent control.⁶⁹ A brief overview of each type can shed light on what federal and state authorities are up against when legislating on this issue.⁷⁰

Intimate terrorism and violent resistance are two broad types of IPV that often go hand-in-hand.⁷¹ Intimate terrorism refers to the idea that one partner habitually uses isolation, threats, and violence to essentially control the victim’s life.⁷² The perpetrators of intimate terrorism are predominately men.⁷³ Violent resistance, on the other hand, refers to violence perpetrated by victims against their partners who have

63. *Id.*

64. *Id.*

65. *Id.*

66. Foster, *supra* note 1.

67. FROLIK & KAPLAN, *supra* note 60, at 406 (discussing abuse as possible in both institutional and non-institutional settings).

68. *Id.* at 407.

69. Michael P. Johnson, *Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence*, 12 VIOLENCE AGAINST WOMEN 1003, 1003–18 (2006).

70. *See generally id.*

71. *Id.* at 1003.

72. *Id.* at 1009.

73. *Id.* at 1010.

exhibited intimate terrorism.⁷⁴ As expected, perpetrators of violent resistance are predominately women.⁷⁵ For example, the previous story of Marie Burke is one of intimate terrorism,⁷⁶ and although she did not engage in violent resistance, it would not be surprising for someone in Marie's position to fight back. Another possible example of intimate terrorism is a partner signing over a durable power of attorney to their significant other, only to have the power abused when it springs into being.⁷⁷

Mutual violent control, unlike the other types, occurs when both partners use violence as a means to battle for control over the other.⁷⁸ Johnson found it to be generally rare and the female/male split to be fifty-fifty.⁷⁹

Situational couple violence, in contrast, is not associated with controlling behavior, but rather an outburst of physical violence toward each other, often after a heated argument.⁸⁰ Unlike intimate terrorism and violent resistance, situational couple violence is not as gendered.⁸¹ Johnson found that 44 percent of the perpetrators were women, and 56 percent were men.⁸² A common example of situational couple violence among the elderly is one spouse becoming frustrated with their partner who suffers from Alzheimer's or dementia and twisting their arm or punching them to get their attention.⁸³ This type of violence can be common with spousal caregivers, who may feel hopeless, angry, or resentful, and accordingly, crack under the pressure of their responsibilities and take it out on the victim.⁸⁴

74. *Id.* at 1010.

75. *Id.*

76. *See supra* text accompanying notes 1–10.

77. O'Brien, *supra* note 21.

78. Johnson, *supra* note 69, at 1010.

79. *Id.*

80. *Id.* at 1006.

81. *Id.* at 1010.

82. *Id.*

83. Donald Weaver, *Dementia's hidden darkness: Violence and Domestic Abuse*, THE CONVERSATION (Nov. 12, 2018, 5:10 PM), <https://theconversation.com/dementias-hidden-darkness-violence-and-domestic-abuse-104308>.

84. FROLIK & KAPLAN, *supra* note 60, at 411.

C. Elderly Susceptibility to IPV

There are various forms and iterations of IPV, but what causes it? IPV is commonly triggered by humiliation, desperation, and even protracted periods of unemployment.⁸⁵ In fact, IPV is more than three and a half times more likely to occur when a couple is under financial strain, even if the financial strain was just their subjective feelings and their resources were not actually strained to the extent they believed them to be.⁸⁶ As individuals advance into their golden years, physical and cognitive abilities begin to decline, and some may find it difficult to navigate their emotions when prompted with stressful situations.⁸⁷ Financial stress can keep people in abusive relationships, which could prove to be doubly problematic for the elderly as they might be on a fixed income.⁸⁸ Perpetrators are often intimate partners, typically males, that have prior or current substance abuse issues, are unemployed or experiencing financial troubles, and who are typically experiencing considerable amounts of stress.⁸⁹ While we may think of them as gentle grandparents, elderly Americans are not immune from these types of societal pressures and fears, and so it should not be surprising that they too experience IPV in their relationships.⁹⁰

As generations of Americans grow older, the dynamics of their homes, marriages, and lives can change dramatically.⁹¹ Senior citizens are regularly confronted with triggers of anxiety such as health problems, financial insecurity, loss of independence, isolation, and end-of-life planning.⁹² It makes sense then, that in an increasingly uncertain society, a desire to feel powerful and in control can lead to an outburst of IPV, no matter the age demographic. For instance, an elderly couple

85. Samantha Gluck, *Causes of Domestic Violence, Domestic Abuse*, HEALTHY PLACE: DOMESTIC VIOLENCE (July 27, 2012), <https://www.healthyplace.com/abuse/domestic-violence/causes-of-domestic-violence-domestic-abuse>.

86. MICHAEL L. BENSON & GREER L. FOX, ECONOMIC DISTRESS, COMMUNITY CONTEXT AND INTIMATE VIOLENCE: AN APPLICATION AND EXTENSION OF SOCIAL DISORGANIZATION THEORY, FINAL REPORT 53–54 (2002).

87. Susanne Scheibe, *The Golden Years of Emotion*, ASS'N FOR PSYCH. SCI. (Oct. 24, 2012), <https://www.psychologicalscience.org/observer/the-golden-years-of-emotion>.

88. BENSON & FOX, *supra* note 86 at 125–126.

89. Mark Lachs & Karl Pillemer, *Elder Abuse*, 373 NEW ENG. J. MED. 1947, 1950 (2015).

90. *Id.*

91. *Anxiety in the Elderly: Symptoms and Restorative Strategies*, INST. ON AGING (July 5, 2018), <https://blog.ioaging.org/mental-illness/anxiety-in-the-elderly-symptoms-and-restorative-strategies/>.

92. *Id.*

may experience an empty home for the first time in decades, which can lead to depression, anxiety, and the loss of purpose and control.⁹³ In the post-Great Recession American society, fewer and fewer elderly Americans have the funds necessary to retire as early as they would prefer, to live the lifestyle they desire, or in some cases, to even retire at all.⁹⁴ For some elderly couples, this can take the form of working a few years longer than planned, moving back in with their children, or experiencing an embarrassing drop in their standard of living.⁹⁵ Many retirees are finding themselves returning to the workforce just to stay financially afloat.⁹⁶ Those who lose their job but want to continue working may struggle because the elderly are more likely than their younger cohorts to experience protracted periods of joblessness.⁹⁷ Many American households, including those with retirement accounts, reach retirement age with too little to maintain their standard of living, even after accounting for income derived from Social Security.⁹⁸ Even well-set retirees may struggle to adjust to their lack of a daily agenda, which can lead to feeling a loss of control.⁹⁹ These feelings of helplessness and despair can manifest themselves in frightening ways. One study analyzed murder cases involving elderly couples, where one spouse provided significant care for the other, and found a recurring desire on the perpetrator's part to control a seemingly impossible situation.¹⁰⁰

Among all age groups, IPV takes many forms, such as physical or sexual violence, threats of physical or sexual violence, or psychological and emotional violence.¹⁰¹ In the context of elderly partners, IPV can

93. *The Scope Radio: The Dangers of Empty Nest Syndrome*, UNIV. OF UTAH HEALTH (Oct. 7, 2014) (downloaded using iTunes).

94. Sandy Mackenzie, *The Impact of the Financial Crisis on Older Americans*, AARP PUB. POL'Y INST. 1, 8 (2008), https://assets.aarp.org/rgcenter/econ/i19_crisis.pdf.

95. *Id.*

96. Gregory Bresiger, *Millions of retirees are returning to work looking for extra income*, N.Y. POST (May 12, 2019, 12:19 AM), <https://nypost.com/2019/05/12/millions-of-retirees-are-returning-to-work-looking-for-extra-income/>.

97. E.S. Browning, *Aging and Broke, More Lean on Family*, WALL ST. J. (Dec. 31, 2011), <https://www.wsj.com/articles/SB10001424052970203899504577128821679773752> (citing research conducted by Boston College's Center for Retirement Research and New York Life Insurance Co.).

98. *Id.*

99. Ben Renner, *Retirement Blues: Average Retiree Gets Bored After Just One Year, Survey Finds*, STUDY FINDS (Mar. 19, 2019), <https://www.studyfinds.org/most-people-grow-bored-retirement-just-one-year/>.

100. Roberto et al., *supra* note 15, at 237.

101. *Overview of Intimate Partner Violence*, NAT'L INST. JUST. (Oct. 23, 2007), <https://nij.ojp.gov/topics/articles/overview-intimate-partner-violence>.

take any number of unique forms, such as withholding medication or pilfering their partner's funds.¹⁰² An unfortunately common example is where a victim's mental capacity has slipped, and they have signed over a power of attorney to their partner.¹⁰³ These situations can be ripe for abuse, as the victim may not even be aware of the precariousness of their situation.¹⁰⁴

As is the case in almost all age groups, it is not easy for a victim of IPV to leave their abuser.¹⁰⁵ Elderly victims can experience the same thoughts that victims of any age do, such as fearing retaliation from their partner if they report the abuse, not wanting to get their partner in trouble, or rationalizing the behavior in the hope that their partner improves his or her behavior.¹⁰⁶ If declining health, mental faculties, or physical mobility means a victim must depend on their abuser, then that victim faces an even steeper path to relief.¹⁰⁷ Abuse victims often tolerate the mistreatment in fear of losing the benefits that the abuser provides.¹⁰⁸ Senior citizens tend to be more conservative and traditional,¹⁰⁹ and therefore may be less inclined to leave their significant other. The victim may have multi-generational families with their abuser, share a residence, or even be their caretaker, as was the case with Marie Burke.¹¹⁰ The abused may not be able to rely on doctors and mandatory reporters to help with their situation, since signs of IPV among the elderly are recognized at a lower rate than among younger individuals.¹¹¹ For instance, a broken bone or a large bruise may not suggest IPV in the same way it would with a twenty-year-old woman,

102. *What Is Domestic Abuse*, ALIVE, <https://alivestl.org/what-is-domestic-abuse/> (last visited Nov. 9, 2020).

103. Weaver, *supra* note 83.

104. O'Brien, *supra* note 21.

105. *The Truth About Why Victims Don't "Just Leave" Their Abuser*, WHERE'S THE LINE? (Oct. 6, 2020), <https://wherestheline.info/the-truth-about-why-victims-dont-just-leave-their-abuser/>.

106. Natalie Schreyer, *Too terrified to speak up: Domestic abuse victims afraid to call police*, USA TODAY (Apr. 9, 2018, 6:00 AM), <https://www.usatoday.com/story/news/nation/2018/04/09/too-terrified-speak-up-domestic-abuse-victims-afraid-call-police/479855002/>.

107. 2002 WORLD REPORT ON VIOLENCE AND HEALTH, *supra* note 23.

108. FROLIK & KAPLAN, *supra* note 60 at 406–07.

109. Tomas Charmorro-Premuzic, *Why Are Older People More Conservative?*, PSYCH. TODAY (Oct. 11, 2014), <https://www.psychologytoday.com/us/blog/mr-personality/201410/why-are-older-people-more-conservative>.

110. Foster, *supra* note 1.

111. Chloe Sidley & Lauren T. Southerland, *When a "Fall" Isn't a Fall: Screening for Elder Mistreatment*, EMERGENCY PHYSICIANS MONTHLY (Dec. 9, 2015), <https://ep-monthly.com/article/when-a-fall-isnt-a-fall-screening-for-elder-mistreatment/>.

and an “I fell down” excuse seems more plausible with an elderly person.¹¹² Further complicating the ability to escape or seek relief are situations where the victim suffers from memory-loss disorders like Alzheimer’s or dementia.¹¹³

The demographics of elderly Americans are changing, and in ways that suggest IPV will be more prevalent in the future.¹¹⁴ A review of elderly female victims found risk factors include living with the perpetrator, cognitive impairment, feeling depressed or stressed, fewer years of education, lower household salary, non-Caucasian ethnicity, having few social supports, alcohol or drug abuse by the perpetrator or victim, and feeling dependent on the partner.¹¹⁵ America’s demographics are slated to trend in many of those directions: future senior citizens will be much more ethnically diverse than they currently are, they will likely have large gaps in levels of education, and elderly Americans are working longer in the post-recession economy because of insufficient retirement funds.¹¹⁶ Contrary to common opinion, the elderly do not mature out of IPV, and the factors are aligning to create a proverbial powder keg. A failure to address or even recognize the susceptibility of the elderly population can, and likely will, have unfortunate consequences.

III. Analysis

Elderly victims have a number of systemic barriers to overcome on their path to finding relief from their abuser. To start, there is not a consistent procedure to screen and report IPV among the elderly.¹¹⁷ Without a clear federal mandate to address the problem, states are not

112. *Id.*

113. Weaver, *supra* note 83.

114. Melissa M. Batt, Domestic Violence in Elderly Women: A Systematic Review (2011) (MD, MPH dissertation, The University of Texas), <https://digitalcommons.library.tmc.edu/dissertations/AAI1484206>.

115. *Id.*

116. Paola Scommegna et al., *Eight Demographic Trends Transforming America’s Older Population*, POPULATION REFERENCE BUREAU (Nov. 12, 2018), <https://www.prb.org/eight-demographic-trends-transforming-americas-older-population/> (citing NAT’L ACAD. SCI. ENG’G, & MED., *FUTURE DIRECTIONS FOR THE DEMOGRAPHY OF AGING* (2018), https://www.indexinvestor.com/resources/Research-Materials/Demographics/NAS_on_Demog_Trends.pdf).

117. Cynthia Feltner et al., *Screening for Intimate Partner Violence, Elder Abuse, and Abuse of Vulnerable Adults: An Evidence Review for the U.S. Preventive Services Task Force*, 169 EVIDENCE SYNTHESIS 1683 (2018). [hereinafter *Screening for Intimate Partner Violence*].

requiring IPV screening among the elderly, which can lead to significant underreporting of the actual extent of the problem.¹¹⁸ Beyond the screening difficulties, elderly victims often have to get past roadblocks such as inadequate emergency housing and difficulty in obtaining orders of protection.¹¹⁹ Discussing solutions requires a deeper analysis of the systemic problems contributing to the situation.

A. The Screening Problem

One of the biggest hurdles to properly addressing the issue of elderly IPV is the lack of a proper screening regimen.¹²⁰ A wide-ranging network of professionals and organizations is prepared to help victims, but they typically require a referral.¹²¹ Medical professionals, in all fields, need to be equipped with the proper screening tools to identify IPV in the elderly and raise the issue with the proper authorities.¹²²

1. THE OPERATIVE SUBSTRUCTURE

The initial screening is vital because it is often what sets the substructure that works to properly address IPV in motion.¹²³ Adult Protective Services (“APS”) is a series of state and local social service programs that serve older adults and investigate cases of abuse.¹²⁴ APS programs and protocols vary from state to state and can be rather convoluted,¹²⁵ but they operate under the same basic premise: APS systems work hand-in-hand with professionals who identify and report the abuse.¹²⁶ Both the elderly victims and local APS agencies rely on the screening individual to make a report so that an investigation can begin.¹²⁷ The initial screen is so crucial because without it, victims may go unidentified and suffer unnecessary harm from their abusers.¹²⁸

118. *Id.* at 1682.

119. *Id.* at 1681.

120. *Id.* at 1683.

121. *Id.* at 1684.

122. *Id.* at 1681.

123. *Id.* at 1679.

124. *How APS Helps*, NAT’L ADULT PROTECTIVE SERVS. ASS’N, <https://www.napsa-now.org/get-help/how-aps-helps/> (last visited Nov. 9, 2020) [hereinafter *How APS Helps*].

125. *APS Example Flow Chart*, NAT’L ADULT PROTECTIVE SERVS. ASS’N, <https://ncea.acl.gov/NCEA/media/publications/APS-Flow-Chart.pdf> (last visited Nov. 9, 2020).

126. *Id.*

127. *Id.*

128. *Id.*

The typical four-step process for processing an IPV claim through a local APS agency is as follows: (1) the concerned party contacts the local APS office to report the concerns they have regarding the health and wellness of the elderly person; (2) the report's details are screened by a trained professional, who evaluates whether the situation meets the jurisdiction's statutory requirements for IPV; (3) if that is satisfied, the APS worker will initiate face-to-face contact with the aforementioned elderly individual; and (4) once in-person contact is made, the APS professional will assess the individual's safety and need for assistance to determine the appropriate course of action to achieve proper well-being.¹²⁹

The APS investigatory system relies on reports being generated.¹³⁰ The fact that state laws regarding the reporting of abuse vary considerably is a wrench in those gears.¹³¹ These mandatory reporting laws vary in definitions of mandated reporters, report timing requirements, and penalties for a failure to report, which can create a confusing web of practices that vary from state-to-state.¹³²

There are essentially two models that delineate mandated reporters.¹³³ On one end, there is the expansive model advanced by sixteen states (and Guam), with adherents including Florida, North Carolina, and Texas.¹³⁴ In these jurisdictions, the state places the burden on all of their citizens to report their concerns if they have reasonable cause.¹³⁵ On the other end of the spectrum is the narrow model advanced by

129. *Id.*

130. *Id.*

131. See generally *2013 Nationwide Survey of Mandatory Reporting Requirements for Elderly and/or Vulnerable Persons*, NAPSA, <http://www.napsa-now.org/wp-content/uploads/2016/05/Mandatory-Reporting-Chart-Updated-December-2015-FINAL.pdf> (last updated December 2015) [hereinafter NAPSA Survey] (containing a detailed list of each state's mandated reporter laws and listing the relevant state statutes).

132. *Id.*

133. *Id.*

134. See DEL. CODE ANN. tit. 31, § 3910 (2020); FLA. STAT. § 415.1034 (2020); 10 GUAM CODE ANN. § 21003 (2020); IND. CODE ANN. § 12-10-3-9 (2020); KY. REV. STAT. ANN. § 209.030 (West 2020); LA. STAT. ANN. § 15:1504 (2020); MISS. CODE ANN. § 43-47-7 (2020); MO. REV. STAT. § 192.2405 (2020); N.H. REV. STAT. ANN. § 161-F:46 (2020); N.M. STAT. ANN. § 27-7-30 (2020); N.C. GEN. STAT. § 108A-102 (2020); OKLA. STAT. tit. 43A, § 10-104 (2020); 42 R.I. GEN. LAWS § 42-66-8 (2020); TENN. CODE ANN. § 71-6-103 (2020); TEX. HUM. RES. CODE ANN. § 48.051 (West 2020); UTAH CODE ANN. § 62A-3-305 (LexisNexis 2020); WYO. STAT. ANN. § 35-20-103 (2020).

135. See *id.* (listing "expansive" state mandatory reporting statutes).

thirty-three states, which explicitly lists out who is a mandated reporter.¹³⁶ Some of the narrow model states allow for those specified to report, but do not require them to do so.¹³⁷ The lone outlier is Colorado, which urges individuals to report but does not specify individuals and imposes no mandate.¹³⁸ Interestingly, twenty-four states and the District of Columbia require financial institutions to report, and in addition, Iowa and Virginia have language indicating permissive reporting for these institutions.¹³⁹

Significantly less variation in timing requirements and penalties exists among the states.¹⁴⁰ Twenty-two states require an immediate report in some form, seven require a report within twenty-four hours, and a few require a report “as soon as possible.”¹⁴¹ There are seven states with no explicit timeline for reporting, despite all seven having detailed mandated reporters in some form.¹⁴² In thirty-two states, the penalty for a failure to report is a misdemeanor.¹⁴³

2. THE STATUS QUO AGAINST SCREENING

With reporting laws existing in most states and an APS system waiting to investigate, the problem of elderly IPV should be all sewn up, right? Not so fast. Again, the system relies heavily on micro-level screening and reporting; and unfortunately, screening for IPV among elderly patients is often discouraged or non-existent.¹⁴⁴ A 2004 study found that physicians accounted for only 1.4 percent of all reports of elder abuse to local APS programs.¹⁴⁵ A 2010 study found that 67 percent of physicians felt their training regarding elder abuse was not very

136. See NAPSA Survey, *supra* note 131.

137. *Id.*

138. COLO. REV. STAT. § 26-3.1-102 (2020).

139. See NAPSA Survey, *supra* note 131.

140. *Id.*

141. *Id.*

142. *Id.*

143. See FAMILY LAW—FAMILY PROTECTION AND WELFARE: ADULT PROTECTION AND REPORTING, LEXIS (Feb. 2020), <https://advance.lexis.com/api/permalink/f85c117e-7913-4a61-8dc4-2c6592510e76/?context=1000516>.

144. U.S. Preventive Servs. Task Force, *Screening for Intimate Partner Violence and Abuse of Elderly and Vulnerable Adults: Recommendation Statement*, 87 AM. FAM. PHYSICIAN 576, 576 (2013) (“IPV and abuse of elderly and vulnerable adults are common in the United States but often remain undetected.”).

145. See NAT’L COMM. FOR PREVENTION ELDER ABUSE & NAT’L ADULT PROTECTIVE SERVS. ASS’N, THE 2004 SURVEY STATE ADULT PROTECTIVE SERVICES: ABUSE ADULTS 60 YEARS AGE & OLDER 17 (2006), <http://www.napsa-now.org/wp-content/uploads/2012/09/2-14-06-FINAL-60+REPORT.pdf>.

adequate or not adequate at all.¹⁴⁶ If large numbers of physicians either cannot or do not adequately address the broader issue of elder abuse, society cannot rely on the existing system to address elderly IPV.

Physicians may not screen for elderly IPV because of recommendations from groups like the U.S. Preventive Services Task Force (“USPSTF”).¹⁴⁷ The USPSTF recommends against screening for IPV among the elderly, despite recommending screening for women of a younger age.¹⁴⁸ The USPSTF is funded by the U.S. Department of Health and Human Services and consists of a panel of experts that develops recommendations for clinical preventative services and provides yearly reports to Congress.¹⁴⁹

The USPSTF defines screening for violence as an “assessment of current harm or risk of harm from...intimate partner violence in asymptomatic persons in a healthcare setting.”¹⁵⁰ Some of the USPSTF’s considerations against screening elderly patients include shame, guilt, self-blame, retaliation or abandonment by perpetrators, partner violence, and the awkward repercussions of false-positive results.¹⁵¹ These USPSTF considerations are readily present when screening younger adults, so it seems distorted to override these considerations when the victim is twenty, but not when the victim is seventy.¹⁵² Further, even the USPSTF recognizes that it is hard to make an evidence-based recommendation when such little screening takes place in practice.¹⁵³ As one study found, over 60 percent of physicians have never asked elderly patients about abuse.¹⁵⁴ If elderly victims are not being screened, the process to set an APS agency investigation in motion may never occur, victims will go unattended, and unnecessary harm will result.¹⁵⁵

146. Debra B. Wagenaar et al., *Primary Care Physicians and Elder Abuse: Current Attitudes and Practices*, 110 J. AM. OSTEOPATHIC ASS’N 703, 705 (2010).

147. See USPSTF 2018 RECOMMENDATION, *supra* note 18.

148. *Id.*

149. *About the USPSTF*, U.S. PREVENTIVE SERVS. TASK FORCE (Mar. 2019), <https://www.uspreventiveservicestaskforce.org/Page/Name/about-the-uspstf>.

150. USPSTF 2018 RECOMMENDATION, *supra* note 18.

151. *Id.*

152. *Id.*

153. *Id.*

154. Richard D. Kennedy, *Elder Abuse and Neglect: The Experience, Knowledge, and Attitudes of Primary Care Physicians*, 37 FAM. MED. 481, 482 (2005).

155. See *id.* at 484 (“Despite national data indicating the high prevalence of elder mistreatment, only 23% of respondents to our study believed that elder mistreatment was a significant problem in their own patient populations.”).

3. WHICH SCREENING TOOL TO USE?

If a screening regimen were to be developed, there are various types of screening procedures available to build upon.¹⁵⁶ There are already screening tools in effect nationwide to screen for IPV among women of childbearing age, such as HITS, E-HITS, HARK, and WAST.¹⁵⁷ The question is, can these be adapted or reworked to properly screen for elderly victims of IPV?

The HITS tool requires the treating physician to ask the patient a set of four questions, and has the patient give a numerical response from 1 (never) to 5 (frequently) indicating the frequency of the behavior.¹⁵⁸ The four questions may vary in exact wording, but they essentially boil down to these, has your partner ever: (1) physically hit you; (2) insulted or talked down to you; (3) threatened you with harm; or (4) screamed or cursed at you?¹⁵⁹ A score of 10 or higher indicates the person is at risk of IPV or is already a victim of it.¹⁶⁰

A HITS screening covers physical and emotional abuse, but fails to adequately address sexual abuse, so some have added a fifth question asking whether their partner has forced them to have sexual activities with them in the past twelve months—which is commonly known as the Extended-HITS, or E-HITS screening tool.¹⁶¹

HARK similarly addresses physical and emotional abuse within the past twelve months but abandons the frequency scale.¹⁶² The four questions asked are whether, in the past year, their partner has: (1) humiliated or emotionally abused them in other ways; (2) made them feel afraid of them; (3) raped or forced them to have any kind of sexual activity; or (4) kicked, hit, slapped or otherwise physically hurt them.¹⁶³ A positive screening occurs when someone answers yes to one or more of these screening questions.¹⁶⁴

156. See USPSTF 2018 RECOMMENDATION, *supra* note 18.

157. *Id.*

158. *Hurt, Insulted, Threatened with Harm and Screamed (HITS) Domestic Violence Screening Tool*, BAYLOR HEALTH, https://www.baylorhealth.com/PhysiciansLocations/Dallas/SpecialtiesServices/EmergencyCare/Documents/BUMCD-262_2010_HITS%20survey.pdf (last visited Nov. 9, 2020).

159. *Id.*

160. *Id.*

161. Katherine M. Iverson et al., *Accuracy of an Intimate Partner Violence Screening Tool for Female VHA Patients: A Replication and Extension*, 28 J. TRAUMATIC STRESS 79, 81 (Jan. 2015).

162. *Screening for Intimate Partner Violence*, *supra* note 117.

163. *Id.*

164. *Id.*

A screening tool like WAST takes a slightly different approach. Instead of asking only yes or no questions, WAST is a series of eight questions with a multiple-choice answer system.¹⁶⁵ The questions are as follows:

1. In general, how would you describe your relationship? (a lot of tension, some tension, or no tension)
2. Do you and your partner work out arguments with. . . (great difficulty, some difficulty, or no difficulty)?
3. Do arguments ever result in you feeling down or bad about yourself? (yes or no)
4. Do arguments ever result in hitting, kicking or pushing? (often, sometimes, or never)
5. Do you ever feel frightened by what your partner says or does? (often, sometimes, or never)
6. Has your partner ever abused you physically? (often, sometimes, or never)
7. Has your partner ever abused you emotionally? (often, sometimes, or never)
8. Has your partner ever abused you sexually? (often, sometimes, or never).¹⁶⁶

Though this test may capture a wider range of IPV, a glaring issue with WAST is that there is no clear number of responses required to indicate a positive screening response.¹⁶⁷

HITS, E-HITS, HARK, and WAST all ask similar questions, and can therefore be susceptible to the same problems. Each tool requires input solely from the patient about whether their partner has done this or that to them or has made them feel this way or that way.¹⁶⁸ In this regard, the USPSTF's concerns about screening procedures with the elderly make sense. Feelings of shame, guilt, or fear could lead to misleading responses and throw the entire screening tool out of whack.¹⁶⁹ Diminished mental capacity or delusions could lead to false positives, which could be particularly thorny when they relate to IPV.¹⁷⁰

To relieve those concerns, the test should be simple and incorporate the screener. Relying on the screener's input would tackle two

165. *Id.*

166. *Id.*

167. *Id.*

168. *See generally id.*

169. *See* USPSTF 2018 RECOMMENDATION, *supra* note 18 (explaining the potential harms of screening including guilt and shame); *see generally* *Screening for Intimate Partner Violence*, *supra* note 117.

170. *See id.*

structural problems: it would remove some of the burden from the victim while also forcing screeners to actually screen for IPV. An adaptation of a screening tool such as the Elder Abuse Suspicion Index (“EASI”) may be able to address those problems because it incorporates the care provider in EASI’s sixth question.¹⁷¹ EASI is a set of six yes or no questions that serves as a screening tool for general practitioners and geriatrists but could also be used by nurses and other care providers.¹⁷² It could even be implemented as part of an emergency department’s standard protocol for elderly patients.¹⁷³ Five of the six questions are asked to the patient, and the final question is for the care provider to answer.¹⁷⁴ The questions are generally phrased as follows, in this order:

1. Have you relied on people for any of the following: bathing, dressing, shopping, banking, or meals?
2. Has anyone prevented you from getting food, clothes, medication, glasses, hearing aids, or medical care, or from being with people you wanted to be with?
3. Have you been upset because someone talked to you in a way that made you feel shamed or threatened?
4. Has anyone tried to force you to sign papers or to use your money against your will?
5. Has anyone made you afraid, touched you in ways that you did not want, or hurt you physically?
6. (For the care provider) Today, or at any point in the past twelve months, have you noticed poor eye contact, withdrawn nature, malnourishment, hygiene issues, cuts, bruises, inappropriate clothing, or medication compliance issues?¹⁷⁵

A “yes” response to questions two through six raises suspicion and may prompt a referral for a further evaluation by APS or the local equivalent.¹⁷⁶ A World Health Organization study tested the EASI screening tool in eight participating countries and found that it had content validity—a key measure indicating that the test is representative of all aspects it intends to measure—in each.¹⁷⁷ Benefits of this

171. See *Elder Abuse Suspicion Index*, U. IOWA MED. (Nov. 17, 2009), https://medicine.uiowa.edu/familymedicine/sites/medicine.uiowa.edu/familymedicine/files/wysiwyg_uploads/EASI.pdf [hereinafter *EASI*]; see also SILVIA PEREL-LEVIN, DISCUSSING SCREENING FOR ELDER ABUSE AT PRIMARY HEALTH CARE LEVEL, WORLD HEALTH ORG. 1, 15 (2008).

172. *Id.*

173. Sidley & Southerland, *supra* note 111.

174. *EASI*, *supra* note 171.

175. *Id.*

176. *Id.*

177. WORLD HEALTH ORG., A GLOBAL RESPONSE TO ELDER ABUSE AND NEGLECT: BUILDING PRIMARY CARE CAPACITY TO DEAL WITH THE PROBLEM WORLDWIDE: MAIN

screening tool will be more thoroughly discussed in Part IV of this Note, but with a few modifications. A modified EASI test could be used for elderly IPV and be an effective screening tool for care providers.

B. Systemic Barriers to Relief

Beyond the challenges to relief posed by an inadequate screening system, elderly victims face many systemic barriers when seeking relief from their abuser.¹⁷⁸ Options such as shelters or obtaining an order of protection are more easily available to younger victims of IPV than elderly victims.¹⁷⁹ Without reform, elderly victims will be further dissuaded from escaping the clutches of IPV and seeking relief.

1. ILL-EQUIPPED SHELTERS

Shelters, commonly known as battered women's shelters or just women's shelters, are a crucial step in the relief process.¹⁸⁰ They are places where IPV victims can escape their abusive situation and find solace in a safe, stable location.¹⁸¹ These places of refuge give the abused a bedrock from which to re-establish their independence and assess their options.¹⁸² They offer a number of services to meet both daily (shelter, meals, and medical services) and rehabilitative (support groups, counseling, and assistance obtaining legal services) needs.¹⁸³ Without shelters, victims would face the appalling dilemma of having to choose between staying with their abuser or facing a high risk of

REPORT (2008), http://www.who.int/ageing/publications/ELDER_DocAugust08.pdf?ua=1.

178. See Slye & Brandl, *supra* note 19 (explaining the impacts of ill-equipped shelters on survivors of elder abuse); INST. MED., *supra* note 20, at 101–04 (explaining the difficulties elders face in obtaining protective orders).

179. Cf. Slye & Brandl, *supra* note 19.

180. Natasha Tracy, *Battered Women Shelters: What Are They? How to Find One?*, HEALTHYPLACE (May 3, 2019), <https://www.healthyplace.com/abuse/domestic-violence/battered-women-shelters-what-are-they-how-to-find-one>.

181. *Id.*

182. Sara Perez et al., *The Attenuating Effect of Empowerment on IPV-Related PTSD Symptoms in Battered Women Living in Domestic Violence Shelters*, 18 VIOLENCE AGAINST WOMEN 102, 103 (2012).

183. Tracy, *supra* note 180.

homelessness.¹⁸⁴ Although many shelters are female-specific, an increasing number of shelters are admitting male IPV victims.¹⁸⁵

Though shelters offer beneficial services and play a foundational role in the relief process, they pose a number of issues when it comes to elderly IPV victims.¹⁸⁶ Nearly 40 percent of Americans aged sixty-five or older have a disability.¹⁸⁷ In data collected by the U.S. Census Bureau, nearly two-thirds of those individuals indicated that their disability limited their mobility, and the second most common response was that it made independent living difficult.¹⁸⁸ Health conditions may mean the victim can no longer drive or navigate public transit (if it is even available),¹⁸⁹ which might mean their only reliable source of transportation is their abuser. The current options available at many shelters are often unable to meet the special needs of elderly victims with limited mobility and health issues.¹⁹⁰ These shelters are typically not able to assist the elderly with daily tasks such as bathing, taking medication, and getting dressed.¹⁹¹ A need for specialized shelters to help address these issues is evident.

Shelters such as the non-profit Weinberg Center have pioneered the concept of elder-centric IPV shelters and offer a much-needed alternative to the typical shelter, which cannot meet the therapeutic, medical, and cognitive needs of an elderly IPV victim.¹⁹² Without adequate emergency housing, elderly victims are often forced to stay in an abusive environment because they have nowhere else to go.¹⁹³ What started as a single shelter in the Bronx has already blossomed into over a dozen

184. Eleanor Lyon et al., NAT'L INST. JUST., MEETING SURVIVORS' NEEDS: A MULTI-STATE STUDY OF DOMESTIC VIOLENCE SHELTER EXPERIENCES 57 (2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/225025.pdf>.

185. Lauren Silverman, *More Domestic Violence Shelters For Men Opening*, NPR (July 15, 2017, 8:52 AM), <https://www.npr.org/2017/07/15/537381161/more-domestic-violence-shelters-for-men-opening>.

186. Linda Vinton, *A Model Collaborative Project Toward Making Domestic Violence Centers Elder Ready*, 9 VIOLENCE AGAINST WOMEN 1504, 1510 (2003) [hereinafter *Making Domestic Violence Centers Elder Ready*].

187. U.S. CENSUS BUREAU, RELEASE NO: CB14-218, MOBILITY IS MOST COMMON DISABILITY AMONG OLDER AMERICANS (2014) [hereinafter U.S. CENSUS BUREAU].

188. *Id.*

189. *Older Drivers*, NAT'L INST. ON AGING (Dec. 12, 2018), <https://www.nia.nih.gov/health/older-drivers>.

190. Slye & Brandl, *supra* note 19.

191. *Making Domestic Violence Centers Elder Ready*, *supra* note 186.

192. *Safe Shelter*, WEINBERG CTR. FOR ELDER JUST. 2, <https://theweinbergcenter.org/wp-content/uploads/2019/05/Weinberg-Safe-Shelter-Brochure-2019.pdf> (last visited Nov. 9, 2020) [hereinafter *Safe Shelter*].

193. *Id.*

shelters in over a dozen states, with more planned.¹⁹⁴ Just like a standard shelter, these shelters screen for abuse, offer follow-up care and legal counseling, and ultimately aim to safely return residents to the community.¹⁹⁵

Additionally, elder-centric shelters can be easily replicated to provide safe and temporary housing while elderly victims seek relief from their abuser.¹⁹⁶ The SPRiNG Alliance, a worldwide network of elder abuse shelters, gladly distributes materials, protocols, systems, and methods that they have created.¹⁹⁷ There are a few models of shelters already in existence.¹⁹⁸ The long-term care/assisted living model establishes a shelter program within a single, pre-existing long-term care/assisted living facility.¹⁹⁹ The collaborative model uses a central, community agency to partner with local facilities and allocate the responsibility of sheltering the victims based on each victim's availability and needs.²⁰⁰ Finally, the hybrid model incorporates elements of the previous two models to suit the needs of the particular community.²⁰¹ Each model has strong elements and could be replicated to provide a much-needed source of care and refuge in communities across the United States.

Given the expense of providing housing and care services, softening costs and obtaining funding are of the utmost importance. Some shelters are willing to donate space, but many require compensation before agreeing to become an elder-centric shelter.²⁰² Funds to cover

194. Malya Kuerzweil Levin & Joy Solomon, *Shelter and the Coordinated Community Response to Elder Abuse: A Growing Global Movement*, USC CTR. ON ELDER MISTREATMENT (Feb. 1, 2019), <https://eldermistreatment.usc.edu/shelter-and-the-coordinated-community-response-to-elder-abuse-a-growing-global-movement/>; *Shelter Resource Guide*, SPRiNG ALLIANCE, <http://springalliance.staging.wpengine.com/wp-content/uploads/2018/04/Spring-Alliance-Shelter-Resource-Guide-2017-Booklet-PRESS.pdf> (last visited Nov. 9, 2020) [hereinafter *Shelter Resource Guide*].

195. *Safe Shelter*, *supra* note 192.

196. INST. MED., *supra* note 20.

197. *Joining the Global Elder Abuse Shelter Movement*, WEINBERG CTR. FOR ELDER JUST., <http://springalliance.staging.wpengine.com/wp-content/uploads/2019/05/Weinberg-Shelter-FAQ-2019.pdf> (last visited Nov. 9, 2020) [hereinafter *Joining the Global Elder Abuse Shelter Movement*].

198. *Shelter Resource Guide*, *supra* note 194.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Shelter, The Missing Link In a Coordinated Community Response to Elder Abuse*, WEINBERG CTR. FOR ELDER JUST. 13 (Jan. 2019), http://theweinbergcenter.org/wp-content/uploads/2018/12/WCEJ_Shelter-report_FINAL3.pdf.

start-up costs and ongoing functions can be obtained through a combination of government funding, cost sharing, and private donations.²⁰³ These facilities can be compensated through Medicare and Medicaid and are routinely eligible for pre-existing grants from local departments (such as local APS agencies), state Violence of Crimes Act grants, OVW grants, and other federal programs such as Health and Human Services grants.²⁰⁴ These grants provide reliable sources of funding that have already proved to be successful by pre-existing shelter models.²⁰⁵

2. OBTAINING ORDERS OF PROTECTION

Although it goes by many names, an order of protection is a court order designed to stop violent and harassing behavior and protect the victim from the perpetrator.²⁰⁶ Ex parte orders, often referred to as emergency orders, are orders of protection that do not require the presence of the alleged perpetrator.²⁰⁷ These emergency ex parte orders are temporary and may last only a few weeks, but offer a window in which the victim can seek permanent relief without fearing continued abuse or retaliation.²⁰⁸ By itself, the process of obtaining an order of protection is a problematic barrier because it can be burdensome for an elderly person with limited mobility or health issues.²⁰⁹ As discussed earlier, a significant portion of elderly Americans have a mobility-limiting disability that could hamper their ability to travel.²¹⁰ As was the case with Marie Burke, some victims may not be able to get to the courthouse because their abuser tracks their every move.²¹¹ There has been some reform on this point though, with New York and Wisconsin providing two approaches to the issue that could be adopted nationwide to alleviate the burden on those seeking relief.²¹²

203. *Id.*

204. *Id.*; see also *Thank You To Our Funders*, WEINBERG CTR. FOR ELDER JUST. (last visited Nov. 9, 2020), <https://theweinbergcenter.org/funders/>. [hereinafter *Funders*].

205. *Funders*, *supra* note 204.

206. *Order of Protection Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/o/order-of-protection/> (last visited Nov. 9, 2020).

207. *3 types of orders of protection*, ILL. LEGAL AID ONLINE, <https://www.illinoislegalaid.org/legal-information/3-types-orders-protection> (last updated May 2020).

208. *Id.*

209. INST. MED., *supra* note 20.

210. U.S. CENSUS BUREAU, *supra* note 187.

211. See Foster, *supra* note 1.

212. INST. MED., *supra* note 20; N.Y. LAW § 153-c (also known as New York Uniform Rules for the Family Court §205.7-b); WIS. STAT. § 813.123.

New York has allowed a streamlined process to accommodate the issues that many elderly victims confront, and New York family courts have been accepting of this process.²¹³ New York allows a party to obtain a temporary restraining order (“TRO”) through an electronic appearance.²¹⁴ Under this law, a party must file a petition in advance that sets forth the circumstances in which traveling to or appearing in the courthouse would constitute an undue hardship, or create a risk of harm to the petitioner.²¹⁵ In addition, this petition can be filed remotely through electronic means.²¹⁶ If the petition is granted, the requesting party can appear remotely, as long as they appear via an audio-visual system such as Skype.²¹⁷ As a part of this new law, New York created a pilot program to operate in seven counties across the state.²¹⁸ Key to the pilot program was establishing partnerships with organizations that help IPV victims, such as local hospitals, shelters, and advocacy groups.²¹⁹ In Rochester County, for instance, the Family Court paired with local medical centers to ensure IPV screening was done prior to obtaining an order of protection.²²⁰ The program has seen consistent and active use, and by the end of 2016, there were over seven thousand protective orders filed through this method.²²¹ As of March 2018, various forms of online TRO requests have been approved statewide in fourteen states and in some portions of California.²²² Pairing remote TRO requests with expanding elderly IPV shelters helps to solve two problems at once by providing temporary housing and easier access to legal relief.²²³

213. INST. MED., *supra* note 20; *see, e.g., Melissa S. v. Allen S.*, 2016 NYLJ LEXIS 4147, *4 (citing electronic TRO requests as a positive use of electronic technology to facilitate participation by litigants in judicial proceedings).

214. N.Y. LAW § 153-c.

215. *Id.*

216. *Id.*

217. *Id.*; Beth Fertig, *The Judge Will See You Now. By Skype*, WNYC (Apr. 3, 2017) <https://www.wnyc.org/story/order-protection-judge-can-see-you-now-skype/>.

218. Lindsey Riback, *NY program lets victims file protection orders online*, DEMOCRAT & CHRON. (Nov. 4, 2016, 3:11 PM), <https://www.democratandchronicle.com/story/news/politics/blogs/vote-up/2016/11/04/ny-program-lets-victims-file-protection-orders-online/93293906/>.

219. N.Y. LAW § 153-c.

220. Riback, *supra* note 218.

221. NAT’L CTR. FOR STATE CTS., FACILITATING ACCESS TO PROTECTION ORDERS—TECHNOLOGY SOLUTIONS TO OVERCOME BARRIERS 4 (2018), http://www.vawaandcourts.org/_data/assets/pdf_file/0021/5808/facilitating-access-po.pdf.

222. *Id.*

223. *Id.*

Another path to obtaining an order of protection has been advanced in Wisconsin, which has “individual at-risk” laws that allow third parties to file on behalf of the victim.²²⁴ Wisconsin’s statute defines an individual at risk as “any adult who has a physical or mental condition that substantially...impairs his/her ability to care for his/her needs and is experiencing, has experienced, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.”²²⁵ Wisconsin does not put all victims together though, as the state has a distinct “elder adult at risk” category, defined as “any person 60 years of age or older who is experiencing, has experienced, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.”²²⁶ Wisconsin’s law also recognizes that abuse among partners can take various forms, including financial exploitation and emotional abuse.²²⁷ Violation of Wisconsin’s law carries criminal penalties such as fines and jail time.²²⁸ Wisconsin allows for an interested party to petition on behalf of the elder adult-at-risk to obtain a TRO, and if granted, the court both appoints a guardian ad litem and schedules an injunction hearing.²²⁹ A 2011 study found that the temporary orders are almost always granted, no matter if it was the victim or interested party that petitioned.²³⁰ Subsequent injunction orders were granted at the majority of injunction hearings.²³¹ Weighing the elderly victim’s personal autonomy against society’s interest in protecting victims presents a tricky ethical situation, particularly with a law such as Wisconsin’s that allows third parties to petition, but the upsides outweigh the drawbacks.

IV. Resolution & Recommendation

A perfect solution to intimate partner violence has eluded society since its recognition, and the rate of progress in America has been embarrassingly slow. It was not until 1871 that a U.S. state held that a spouse had no right to beat the other.²³² In 1910, the Supreme Court held that spouses had no cause of action for battery or assault against their

224. Wis. Stat. § 813.123.

225. Wis. Stat. § 55.01.

226. Wis. Stat. § 46.90(1)(br).

227. Wis. Stat. § 813.123(4)(a).

228. Wis. Stat. § 813.123(10).

229. Wis. Stat. § 813.123(3)(a)–(b).

230. Betsy J. Abramson et al., *Wisconsin’s Individual-at-Risk Restraining Order: An Analysis of the First Thirty Months*, 18 ELDER L.J. 247, 258 (2011).

231. *Id.*

232. *Fulgham v. State*, 46 Ala. 143, 148 (1871).

abusive partners.²³³ Even the American Medical Association only began to recommend screening for abuse in 1992.²³⁴ There will be no magical fix, and solving the problem of IPV, at any age, will be an unfortunately arduous process. Still, the current patchwork system of addressing IPV leaves much to be desired. Steps that lead to a more robust, uniform system of screening, that re-authorize and re-define VAWA, and that remove systemic barriers would go a long way to addressing many of the holes in the current system.

A. Addressing the Screening Problem

Laws requiring and identifying a common IPV screening procedure would shed light on the true breadth of the problem and allow local agencies like APS to do what they do. It may be tough to implement this on a federal level, as the debate over the federalism of healthcare rages on as loudly as ever.²³⁵ Systems like APS and medical boards already exist on a state level,²³⁶ so addressing the screening problem should be done at the state level.

New laws should require a healthcare professional to use a screening procedure to screen elderly individuals for IPV during their healthcare visits, such as during a yearly check-up visit. While a good approach would be to model the new IPV-centric procedure after existing screening procedures such as HITS, E-HITS, HARK, and WAST, these rely solely on the victim's input and could be problematic when used with victims who have deteriorated mental faculties.²³⁷

A way to address that issue is to include a screener-oriented question to introduce a measure of objectivity, like the EASI screening tool.²³⁸ A screening tool like this addresses the wide variety of forms

233. *Thompson v. Thompson*, 218 U.S. 611, 614 (1910).

234. ASSOCIATED PRESS, *Doctors Are Advised to Screen Women for Abuse*, N.Y. TIMES (June 17, 1992), <https://www.nytimes.com/1992/06/17/us/doctors-are-advised-to-screen-women-for-abuse.html>.

235. See, e.g., Deane Waldman, *Healthcare is not a federal responsibility—leave it to the states*, THE HILL (May 29, 2017, 3:01 PM), <https://thehill.com/blogs/pundits-blog/healthcare/335539-healthcare-is-not-a-federal-responsibility-leave-it-to-the>.

236. See *How APS Helps*, *supra* note 124; see also *About FSMB*, FED'N OF STATE MED. BDS., <https://www.fsmb.org/about-fsmb/> (last visited Nov. 9, 2020).

237. *C.f.*, *Suspicious and Delusions*, ALZHEIMER'S ASS'N, <https://www.alz.org/help-support/caregiving/stages-behaviors/suspicious-delusions> (last visited Nov. 9, 2020) [hereinafter *Suspicious and Delusions*].

238. See Mark J. Yaffe et al., *Development and Validation of a Tool to Improve Physician Identification of Elder Abuse: The Elder Abuse Suspicion Index (EASI)*, 20 J. ELDER ABUSE & NEGLECT 276 (2008).

that IPV can take while also taking some of the burden off of the patient to be proactive in seeking help.²³⁹ The final, sixth question would be modified to more closely identify the warning signs of IPV, and would look roughly as follows:

6. (For the care provider) Today, or at any point in the past twelve months, have you noticed unexplained injuries, poor eye contact, withdrawn nature, malnourishment, low self-esteem, cuts, bruises, anxiety, or medication compliance issues?

Including the healthcare professional is imperative because they can recognize hidden signs, including multiple injuries in various stages of healing, jaw and zygomatic damage (more consistent with abuse than with falls), and dental fractures or avulsions.²⁴⁰ When equipped with this slightly modified EASI screening tool, screeners can be aware of what to look for and raise a referral to the appropriate APS or equivalent local authority.²⁴¹ Even if a patient gave misleading or inaccurate answers to the initial questions, the screener could still raise a report to APS, who would inquire more deeply into the situation.²⁴² But without that initial report, APS may not even begin to investigate.²⁴³

With America's increasingly diversified demographics, it is crucial that the screening tool be available in a number of languages.²⁴⁴ Modeling the new screening tool after EASI is preferable, as EASI is currently available in fifteen languages, including the four most commonly spoken languages in America and eight of the top fifteen.²⁴⁵ Further, the EASI questions and local APS reports may be condensed into

239. *See id.*

240. Lachs & Pillemer, *supra* note 89, at 1948.

241. *See id.*

242. *See* Holly Ramsey-Klawnsnik, *Understanding and Working with Adult Protective Services (APS): Part II: The Reporting and Investigation of Alleged Abuse*, NAT'L ADULT PROTECTIVE SERVS. ASS'N & NAT'L CTR. ON ELDER ABUSE 2-3 (Sept. 2018), https://ncea.acl.gov/NCEA/media/Publication/NCEA_NAPSA_brief_partII.pdf.

243. *See id.*

244. *See* Rick Noack, *The future of language*, WASH. POST (Sept. 24, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/09/24/the-future-of-language/>.

245. *Elder Abuse Suspicion Index (EASI)*, MCGILL UNIV. DEPT OF FAM. MED., <https://www.mcgill.ca/familymed/research/projects/elder> (last visited Nov. 9, 2020).

a pocket card for physicians.²⁴⁶ The EASI screening tool has even been used by law enforcement personnel.²⁴⁷

There are a few potential downsides of using a tool like EASI with the elderly population. State screening laws that require screening every elderly patient at every visit will likely become burdensome, but there is a difference between universal and selective screening.²⁴⁸ Universal screening is assessing everyone, while selective screening is only screening those who have already met some previously determined criteria.²⁴⁹ State screening laws could require the screener, often a healthcare provider, to engage in selective screening after noticing certain behavioral patterns or for example, bruises.

In addition, the USPSTF could not identify any studies on the effectiveness of screening tools among elderly IPV patients, nor could it identify any studies regarding the potential downsides of screening the elderly.²⁵⁰ There are studies addressing these points in younger populations,²⁵¹ however, these could be replicated with elderly participants. It also may be uncomfortable to talk about IPV with an elderly patient, but medical professionals struggle to discuss it with younger patients and yet still screen for it.²⁵² Mere awkwardness cannot be the reason that so many cases of elderly IPV go undetected. When patients have declining mental faculties, possibly due to Alzheimer's or dementia, there is always a fear of misleading information returning a false positive.²⁵³ That worry is what prompts the inclusion of the sixth, screener-

246. See *id.*; Mark J. Yaffe et al., *Elder Abuse Suspicion Index (EASI)*, MCGILL UNIV. DEP'T FAM. MED., https://www.mcgill.ca/familymed/files/familymed/easi_english_january_2013.pdf (last visited Nov. 9, 2020).

247. Cf. E. Kurkurina et al., *Detection of Elder Abuse: Exploring the Potential Use of the Elder Abuse Suspicion Index by Law Enforcement in the Field*, 30 J. ELDER ABUSE & NEGLECT 103 (2018).

248. USPSTF 2018 RECOMMENDATION, *supra* note 18.

249. See *id.*

250. See *id.*

251. Kelsey Hegarty et al., *Screening and Counselling in the Primary Care Setting for Women Who Have Experienced Intimate Partner Violence (WEAVE): A Cluster Randomized Controlled Trial*, 382 LANCET 249, 254–55 (2013), <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2813%2960052-5>.

252. Charles Moser, *Virtual Mentor: Interviewing a Patient About Intimate Partner Violence*, 16 AM. MED. ASS'N J. ETHICS 872 (2014), <https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2018-05/ecas1-1411.pdf>.

253. See *Suspicious and Delusions*, *supra* note 237.

oriented question to help guard against false positives. The APS investigatory process, while likely uncomfortable for the accused, will also act to shield against unsubstantiated claims.²⁵⁴

Ideally, all states should follow the expansive model of mandatory reporting and mandate all citizens report elderly IPV when they have reasonable cause.²⁵⁵ The states that do not require financial institutions to be mandatory reporters should join the growing majority and require as much. These laws should give explicit timelines, as “as soon as possible” is not a clear standard. Overall, the upside of having a consistent and widespread screening procedure—finding, addressing, and ultimately raising general awareness of IPV rates among the elderly—outweighs the potential downsides. Once the screening process begins and is strengthened, we can turn our attention to other systemic barriers to relief.

B. Altering and Re-Authorizing VAWA

VAWA has always been a bedrock upon which we have expanded our notions of IPV and forged new solutions.²⁵⁶ Since its passage in 1994, subsequent reauthorizations have expanded the original law to recognize the increasingly diverse forms of IPV.²⁵⁷ The 2000 reauthorization added crimes of dating violence and stalking to its scope.²⁵⁸ In 2005, the scope was widened to provide funding for rape crisis centers and broadened services to provide protection for children and teenagers.²⁵⁹ The 2013 re-authorization under the Obama administration added protections for Native American and LGBTQ+

254. See, e.g., *APS Investigations and Services*, TEX. DEPT OF FAM. & PROTECTIVE SERVS., https://www.dfps.state.tx.us/Adult_Protection/Investigations_and_Services.asp (last visited Nov. 9, 2020).

255. See David Godfrey, *Elder Abuse: Mandatory and Permissive Reporting For Lawyers*, NAT'L. CTR. ON L. & ELDER RTS. (Apr. 2018), <https://ncler.acl.gov/getattachment/Legal-Training/Mandatory-Reporting-Ch-Summary.pdf.aspx>.

256. See Monica N. Modi et al., *The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A Public Health Issue*, 23 J. WOMEN'S HEALTH 253, 254–55 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3952594/pdf/jwh.2013.4387.pdf>.

257. *What Is The Violence Against Women Act?*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/resources/vawa/> (last visited Nov. 9, 2020).

258. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§1101–1513 (codified as amended in scattered sections of 18 U.S.C., 22 U.S.C., 27 U.S.C., 42 U.S.C. (2012)).

259. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (codified as amended in scattered sections of 18 U.S.C., 42 U.S.C.).

groups.²⁶⁰ Clearly, the Act was never intended to be static, but rather a piece of legislation that evolved as our understanding of IPV developed.²⁶¹ VAWA, in addition to being re-authorized, should include language identifying elderly IPV and recognizing its varied forms. While some forms of elderly IPV are similar to those experienced by younger victims,²⁶² there are many variations that are particularly relevant to the elderly population, such as abusing a partner's power of attorney, withholding medication, or squandering their partner's money.²⁶³

As discussed in Part II, the presence of laws like VAWA are crucial to supporting the system of agencies that address IPV of any age group. VAWA is in a state of legislative limbo and faces an uncertain future.²⁶⁴ Re-authorizing VAWA would go a long way in ensuring funding for the agencies and non-profits that help to address elderly IPV, such as the Weinberg Center. If faced with an uncertain future, pre-existing shelters and organizations would be understandably hesitant to commit to providing such benefits as elder-centric shelters.²⁶⁵ With a re-authorized VAWA in place that specifically mentions elderly IPV—OVW funding would be more secure and the elder-centric organizations that rely on it could plan and act accordingly. While states could expand their pre-existing domestic abuse laws to more closely model VAWA, state-level laws may struggle to achieve the level of influence that VAWA wields.²⁶⁶

C. Removing Systemic Barriers to Relief

Beefing up the screening procedures and adding elderly IPV to a re-authorized VAWA will move the needle but might be ineffectual on their own. Elderly victims of IPV would still face a number of systemic barriers when they elect to seek relief from their abuser. Securing funding for programs and non-profits could be futile if elderly victims cannot take advantage of their services, and victims may want to seek help

260. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54.

261. See *History of the Violence Against Women Act*, LEGAL MOMENTUM, <https://www.legalmomentum.org/history-vawa> (last visited Nov. 9, 2020).

262. Johnson, *supra* note 69, at 1007–09.

263. *C.f.*, Weaver, *supra* note 83.

264. A.B.A., *supra* note 51.

265. See generally *id.*; see also Allie Gottlieb, *COVID-19, Domestic Violence, and Guns*, THE REGUL. REV. (Apr. 8, 2020), <https://www.theregreview.org/2020/04/08/gottlieb-covid-19-domestic-violence-guns/>.

266. DURBOROW ET AL., *supra* note 53.

before they can get to a healthcare facility. Providing additional elder-centric shelter opportunities and expanding the concepts of remote and third-party orders of protection help alleviate those concerns.

1. ELDER-CENTRIC IPV SHELTERS

It takes an admirable amount of courage for a victim to decide to venture out and seek refuge from their abuser.²⁶⁷ When these victims make that decision, it is in the hopes that there are physical locations out there that can adequately care for them, help them seek legal relief, and revive a sense of empowerment in their respective lives.²⁶⁸ Although the number of elder-centric IPV shelters is growing, the predominant method of addressing IPV is through shelters that, in their current conditions, are unable to meet the particular needs of elderly victims.²⁶⁹ To address this gap, the promising concept of elder-only victim's shelters can be fostered and expanded on across the country. New shelters can be modeled after the existing homes that have started to open in the last couple decades, and these shelters have been very receptive to the idea of replication.²⁷⁰ Some existing shelters could be adapted, but they may not be able to fully handle elderly victims and all their distinctive concerns.²⁷¹

Opening up shelters raises a number of questions. What kinds of shelters and organizations should it partner with? How does the shelter system account for varying levels of resources across the country? How do they pay for it? The hybrid model provides a potential fix to these types of questions because it combines the benefits of two smaller models: the long-term care/assisted living model and the collaborative model.²⁷² The long-term care/assisted living model is beneficial because it allows for elderly IPV shelters to be established as independent apartments within a larger assisted living facility or even multiple locations

267. Anonymous, *A moment that changed me: having the courage to leave an abusive relationship*, THE GUARDIAN (Apr. 28, 2016, 8:29 AM), theguardian.com/commentis-free/2016/apr/28/i-had-the-courage-to-leave-an-abusive-relationship.

268. Laura L. Rogers, *Transitional Housing Programs and Empowering Survivors of Domestic Violence*, U.S. DEP'T. JUST. (Nov. 1, 2019), <https://www.justice.gov/ovw/blog/transitional-housing-programs-and-empowering-survivors-domestic-violence>.

269. Cf. Slye & Brandl, *supra* note 19 (“[C]ommon challenges exist for victims aged 50 and older in accessing domestic violence programs—particularly when it comes to securing accessible emergency shelter and transitional housing.”).

270. See *Joining the Global Elder Abuse Shelter Movement*, *supra* note 197.

271. See *id.*

272. *Shelter Resource Guide*, *supra* note 194.

providing different levels of care.²⁷³ The collaborative model, on the other hand, uses a community agency to coordinate with multiple facilities within a particular geographic area, which share the responsibility of sheltering elder abuse victims based on availability and medical needs.²⁷⁴

The ability to tailor the shelter's attributes to the area is key, as each community is different and has varying levels of resources available. Shelters in rural or low-income areas may not have the resources available to pull off a pure, long-term care/assisted living model, and could benefit greatly by adopting the hybrid model.²⁷⁵ Creating elder-centric shelters through existing healthcare communities helps resolve some financial worries, as it reduces variable costs and maximizes efficiency.²⁷⁶ Reducing variable costs helps to keep expenses to a minimum.²⁷⁷ If appropriate, shelter programs can seek private payment, but often they seek compensation through Medicaid or similar government benefit programs.²⁷⁸ Because domestic violence and elder abuse are expansive terms, shelter professionals can investigate and coordinate with local APS agencies to ensure that the prospective resident is, in fact, an IPV victim, which is another way to reduce costs.²⁷⁹

2. IMPROVING ACCESS TO ORDERS OF PROTECTION

Another barrier could be removed by improving access to orders of protection for elderly victims. As discussed, elderly victims of IPV are at a particular disadvantage when it comes to seeking relief through the courts, given higher rates of mobility impairment, health issues, and the oft-looming presence of their abuser, which may be their only means of transportation. Making these capabilities available at places like legal aid centers or the aforementioned elder-centric shelters is a good concept, since physically getting to a courtroom might present a

273. *Id.*

274. *Id.*

275. *See generally id.* at 17.

276. *Joining the Global Elder Abuse Shelter Movement*, *supra* note 197.

277. *Id.*

278. *Id.*

279. *Id.*

problem if victims rely on their abusive partner for transportation or lack adequate public transportation.²⁸⁰

State court systems can take advantage of pre-existing models to make it less burdensome for elderly victims to obtain orders of protection. One such tactic available is the expedited order of protection process for elderly victims of IPV, which has been championed by many of the New York Family Courts.²⁸¹ These allow for electronic TRO petitions to be filed and for remote, electronic means of appearances for court hearings, which is a great alternative if the victim cannot make it to court.²⁸² These options could be offered as part of the legal aid services often available at shelters, and if combined with newly formed elder-centric shelters, could be an especially effective two-for-one approach.

Wisconsin's elderly adult-at-risk statute provides another example that courts should follow. Of note, Wisconsin allows a third party to petition on behalf of the elder adult-at-risk to obtain a TRO, and if granted, the court both appoints a guardian ad litem and schedules an injunction hearing.²⁸³ Wisconsin's statute proved to be quickly successful in protecting elderly victims from physical, mental, and financial abuse.²⁸⁴ Particularly, it successfully obtains orders of protection against those who have obstructed a health care provider's access, interfered with needed care, stolen medication, or even denied the individual at risk access to medication.²⁸⁵ Within the first thirty months of the law's passage in Wisconsin, nearly 41 percent of the petitions filed were by third parties, and those filed by local APS services fared particularly well.²⁸⁶ Clearly, there is a demand for expanded accessibility to orders of protection, and despite concerns about personal autonomy, at some point society's interest in protecting the victim must take over.

Is this expanded framework for orders of protection perfect? Unfortunately, it may never be. Online forms may elude some of the elderly population, who tend to be less technologically savvy and have

280. *Aging in Place, Stuck without Options: Fixing the Mobility Crisis Threatening the Baby Boom Generation*, TRANSP. FOR AM. 3, <https://t4america.org/docs/SeniorsMobilityCrisis.pdf> (last visited Nov. 9, 2020) (examining the lack of reliable transportation options for elderly Americans).

281. Riback, *supra* note 218.

282. See N.Y. LAW § 153-c.

283. Wis. Stat. § 813.123(3)(a)–(b) (2020).

284. Abramson et al., *supra* note 230.

285. *Id.*

286. *Id.*

more limited access to technology than their younger counterparts.²⁸⁷ Obtaining an order of protection may mean removing the victim's only source of care, transportation, and assistance.²⁸⁸ Although these are valid issues, they should not impede the expansion of accessibility. The existing system of shelters, APS agencies, and even places like assisted-living facilities must be ready to step up and provide a transition for the victim.

V. Conclusion

At seventy-nine years old, Mrs. Y found that medical and social service professionals did not think she was at risk for intimate partner violence due, in part, to her age.²⁸⁹ Mrs. Y never received the help that she needed, and was later murdered by her abuser, her husband.²⁹⁰ She is yet another tragic example of the current system's tendency to underreport and underserve the elderly victims of IPV, leading to victims remaining in abusive situations when they could have been identified and helped. Screening is too often inadequate or non-existent, leading to underreporting. The rules governing mandated reporters, their timelines, and their responsibilities are a patchwork and can be confusing. Once the victim does seek help, the current network of shelters is ill-equipped to handle the special needs of elderly victims.²⁹¹ Even the esteemed court system may be found ill-equipped to handle elderly victims when they choose to seek relief.²⁹²

Given the dynamics of IPV, there will likely never be a solution that reaches all victims and solves all problems. Nevertheless, we should always strive to be as close to that point as possible. Every adjustment and expansion of ideas is a step towards that goal. When a victim finds the courage to reach their hand out, we must be able to see it, grab it, and help the victim out of an unfortunate situation. The options advanced in this Note are not exhaustive, but they are a start. As

287. Monica Anderson & Andrew Perrin, *Tech Adoption Climbs Among Older Adults*, PEW RSCH. CTR. (May 17, 2017), <https://www.pewresearch.org/internet/2017/05/17/technology-use-among-seniors/> (detailing internet usage rates among various age groups).

288. Claire M. Noël-Miller, *Partner Caregiving in Older Cohabiting Couples*, 66 J. GERONTOLOGY 341 (2011), <https://academic.oup.com/psychogerontology/article/66B/3/341/719265>.

289. SAFE LIVES, *supra* note 12, at 12.

290. *Id.*

291. *See id.* at 17–21.

292. *See* INST. MED., *supra* note 20.

NUMBER 1

THE SILENT GENERATION

217

New York's pilot program showed, mandated screening and pairing remote TRO requests with elderly IPV agencies is a sustainable and much-needed integrative approach. Through enhanced screening procedures, a renewed and re-defined VAWA, and the removal of systemic barriers, a more comprehensive system would emerge that could more appropriately uncover and address the multitude of particular issues that arise with IPV among the elderly.

