

THE GOVERNOR'S TASK FORCE
ON ELDER ABUSE

FINAL REPORT

MICHIGAN OFFICE OF SERVICES TO THE AGING
AUGUST 23, 2006



STATE OF MICHIGAN
OFFICE OF SERVICES TO THE AGING
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

SHARON L. GIRE
DIRECTOR

July 28, 2006

Dear Governor Granholm:

It is with great pleasure that I present to you the final report of the Task Force on Elder Abuse.

This Final Report reflects what we have accomplished and our blueprint for systems change to prepare communities to address the needs of a society that is growing older. Michigan can become a leader in the effort to combat elder abuse. The recommendations in this report will help Michigan begin a new era in which our state will be recognized as the safest and most secure place for elders and their families.

Whether it is physical abuse, financial exploitation, emotional abuse, neglect, or self-neglect—the symptoms and treatment of elder abuse are complex. Over the past year, the Task Force sought the expertise of leaders in the field who are combating elder abuse and heard heart-wrenching testimony about real cases, sometimes from the victims themselves. Always at the forefront of the information gathering and deliberations were the needs of local communities in being able to act as key players in both the prevention and prosecution of elder abuse. A number of the recommendations will require the commitment of the State Legislature to work with all concerned parties in championing and crafting key legislation to impact elder abuse.

Thank you for your vision and leadership in making the work of the Task Force possible, and for providing the support that was needed to make it succeed. It had been my distinct honor to serve as the Chair of such a distinguished and dedicated group of people concerned about the well-being of older adults. After a year of work in committees and meetings around the state, the Task Force presents the following set of recommendations for your consideration, as well as for the consideration of all state leaders and concerned Michigianians.

Sincerely,

Dorothy E. Jones, Chair
Governor's Task Force on Elder Abuse

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For more information, please go to:

www.elderabusemi.org

EXECUTIVE SUMMARY

The Governor's Task Force on Elder Abuse, appointed by Governor Jennifer Granholm, met between June 2005 and June 2006. It was charged with the responsibility to examine issues relating to elder abuse and to assist the state in identifying new resources, best practices, and necessary changes in law and policies to assist in the prevention of elder abuse.

The task force responded by recommending the following policy changes:

1. Create a focal point to solve the problems of elder abuse in Michigan through the development of an Elder Abuse Authority to raise public awareness and coordinate prevention, treatment, investigatory and prosecution efforts. This entity would be charged with implementing the recommendations found in this report including integrating state-level reporting systems so that the depth and breadth of Michigan's elder abuse problem can be understood and measured with a common language.
2. Prevent physical abuse, psychological abuse and neglect by promoting abuse prevention within families, including caregiver support and healthcare worker training to help spot abuse. The task force also recognizes that standards for some extra-familial care workers such as in-home and direct care workers need to be set, or revised. In the case of guardians and conservators, standards need to be implemented.
3. Prevent financial exploitation by making it more difficult to misuse financial products and instruments used to commit abuse, including improper variable annuities sales, exaggerated real estate appraisals, and the misuse of joint bank accounts and Powers of Attorney.
4. Remove barriers to reporting abuse in healthcare settings and financial institutions and explore ways in which those working in these areas can become empowered to act as frontline responders to abuse.
5. Enhance investigation of abuse through development of investigative teams made up of key players at the local level. Financial abuse is on the rise and special training in both the issues of elder abuse and financial exploitation for investigators will pave the way for better investigations, resulting in more successful prosecution of abusers.
6. Effectively prosecute abusers through a wide range of changes in current statutes, as well as the need to improve court practices in serving our elder population. These changes range from increasing sentencing guidelines and maximum penalties, to allowing videotaped testimony of elders who have been abused.

The goal of these recommendations is to create a cohesive, coordinated and proactive response to abuse of older adults, by giving agencies, organizations and individuals the tools they need to better protect them. The recommendations are designed to improve Michigan's system to better meet the needs of current victims and to plan for how to deal with a burgeoning older adult population. Specific recommendations include a public awareness campaign, integrating reporting systems, training for law enforcement and prosecutors, and numerous legislative changes to make prosecution of abusers more efficient and sentencing more appropriate to the crime. With the adoption and implementation of these recommendations we can help prevent elder abuse in Michigan.

INTRODUCTION: TRANSFORMING MICHIGAN'S RESPONSE TO ELDER ABUSE

Elder abuse is an issue that is faced by older adults across the globe. In Michigan it is estimated that at least 73,000 older adults are victims of elder abuse. Whether it is physical abuse, financial exploitation, emotional abuse, neglect, or self-neglect, the symptoms and treatment of elder abuse are complex. It is often characterized by life-threatening actions inflicted upon vulnerable adults. It is also about the theft of resources that leads to the financial and emotional devastation of persons who have no ability to recoup their losses.

Unfortunately, what we know about elder abuse, as it exists today is just the tip of the iceberg. It remains a mostly unrecognized and unreported social problem. There is a lack of a comprehensive system to collect data about elder abuse cases. There is no centralized and coordinated depository of elder abuse educational resources. The general public does not have a central place to report suspected abuse. And, justice for the victims is often difficult to achieve. As we see increases in the population of people age 60 and over, and more people reaching age 85 and beyond, the problem of elder abuse will only continue to spread.

When the Governor announced the creation of the Michigan Task Force on Elder Abuse was made on May 25, 2005, the action was applauded both by seniors and those who work everyday to combat this terrible social problem. The charge given the task force by Executive Order No. 2005-11 is to:

1. Review existing state efforts regarding the prevention and prosecution of elder abuse including physical abuse, emotional abuse, neglect, sexual abuse, and financial abuse and exploitation.
2. Identify and prioritize pressing issues and significant challenges that must be addressed to protect Michigan's vulnerable adults from abuse, neglect, and financial exploitation.
3. Review laws, policies, and practices of other states and make recommendations for changes in Michigan to address elder abuse, neglect, and financial exploitation.
4. Recommend a process for the development of a widely accessible reference database of current information and research concerning elder abuse.
5. Provide recommendations to promote effective communications and coordination of efforts between the public and private sectors at both the state and local levels regarding the prevention and effective prosecution of elder abuse.
6. Review and provide advice regarding the potential effectiveness of a public-private communications network throughout Michigan related to elder abuse, including physical abuse, emotional abuse, neglect, sexual abuse, and financial abuse and exploitation.
7. Review other state practices and recommend approaches to develop dedicated local investigative teams that have the tools and legal authority necessary to effectively identify, investigate, and prosecute elder abuse, neglect, and financial exploitation.
8. Identify new opportunities to support and expand research studies that document the

scope and depth of elder abuse, neglect, and financial exploitation in Michigan.

9. Provide recommendations for the development of training and technical assistance materials for investigation and enforcement professionals.
10. Provide recommendations for the development of a plan to generate public awareness of the scope of elder abuse, such as recommendations for public service announcements, editorials, community presentations and forums, website development, publications, and other materials to provide relevant information to the public.
11. Based on the foregoing, make recommendations to the Governor.

The Task Force took very seriously their charge of examining issues relating to elder abuse to assist the state in identifying new resources, best practices, and necessary changes in law, policies, and practices to assist in the prevention of elder abuse. They sought the expertise of leaders in the field who are combating elder abuse and heard heart-wrenching testimony about real cases, sometimes from the victims themselves. In order to gain statewide input, public hearings were held throughout the state and public input was widely sought throughout the process.

While there are a number of successful local elder abuse efforts underway in Michigan, in order to impact elder abuse on a large-scale, change needs to occur on a grander scale. The recommendations developed by the Task Force build on programs already in place. The recommendations have one thing in common—an underlying goal to create a cohesive, coordinated and proactive response to abuse, by giving agencies, organizations and individuals the tools they need to better protect vulnerable older adults and prosecute abusers. These recommendations are a first step in achieving this goal for Michigan’s elders, both present and future.

ELDER ABUSE:
AN OVERVIEW

ELDER ABUSE: AN OVERVIEW

WHO IS COMMITTING ELDER ABUSE?

While many people imagine elder abuse as something done by deranged and anti-social strangers, studies have shown that the most likely abusers are members of the victim's own family.

In most national and state efforts, elder abuse is commonly separated into three main categories: (a) *physical abuse or neglect*, in which a person is physically harmed, (b) *psychological abuse*, in which a person is manipulated, humiliated, or otherwise made to feel distress, and (c) *financial abuse or exploitation*, in which a person's funds and property are misused or stolen from them.

In many cases, any one of these three can, under certain conditions, lead to any other.

When an elder is living on a fixed income, for example, financial exploitation can lead to humiliation and depression, both of which can, in turn, lead to physical illness.

In the case of financial exploitation, family members are more likely to become abusive or exploitative when, for example, any of the following situations exist:

1. The family member has substance abuse, gambling, or financial problems.
2. The family member stands to inherit and feels justified in taking what he or she believes is "almost" or "rightfully" his or hers.
3. The family member fears that an older relative will get sick and use up his or her savings, depriving him or her of an inheritance.

4. The relative has had a negative relationship with the older person and feels a sense of "entitlement."
5. The relative has negative feelings toward siblings or other family members whom he or she wants to prevent from acquiring or inheriting the older person's assets.
6. The family member has been a victim of abuse.

In addition to family members, predators who seek out vulnerable seniors with the intent of exploiting them are likely to engage in one or more of the following behaviors:

1. Professing to love the older person ("sweet-heart scams").
2. Seeking employment as a personal care attendant, counselor, or other similar profession to gain access to their victims.
3. Identifying vulnerable individuals by driving through neighborhoods (to find individuals who are alone and isolated), or contacting recently widowed persons found through newspaper death notices.
4. Moving from community to community to avoid being apprehended (transient criminals).

Beyond these types of individuals are others who assume the guise of honest business-people, only to exploit elders through the following tactics:

1. Overcharging for or not delivering services or products.
2. Using deceptive or unfair business practices.
3. Using their positions of trust or respect to gain compliance.

When it comes to physical abuse, including sexual assault and neglect, abusers commonly fit these descriptions:

1. Paid attendants or employees of long-term care facilities.
2. Family members (many of whom are caregivers).
3. Others whose criminal profiles specifically target the elderly.
4. Caregivers who lack adequate skills, training, time, or energy.
5. Caregivers who are mentally ill or who have substance abuse problems.

WHO IS AT RISK?

Generally speaking, a combination of psychological, social, and economic factors, along with the mental and physical conditions of the victim and the perpetrator, are all contributing factors to elder abuse. In particular, individuals who face an increased risk of being victimized or abused are those who demonstrate these characteristics:

1. Are isolated, lonely, or lack social, emotional, or family support.
2. Are physically or cognitively disabled.
3. Have mental health problems, including substance abuse, psychoses, Alzheimer's and related dementias, as well as depression.
4. Have health issues requiring a high degree of care.
5. Have family members who are unemployed, have substance abuse problems, or are greedy.
6. Have a history of domestic violence, or those who are co-dependent,
7. Lack adequate familiarity with financial matters.
8. Live with a caregiver or friend.

MICHIGAN'S EXPERIENCE

It is difficult to say exactly how many older citizens are abused, neglected, or exploited in large part because surveillance is limited and the problem remains greatly hidden. During calendar year 2005, Michigan's Adult Protective Services Program through the Department of Human Services received 14,641 referrals of suspected abuse, neglect and/or exploitation of elderly and disabled persons. Based on national statistics, the incidence of reporting is one in five for abuse, neglect and/or exploitation. For Michigan, this translates to 73,205 residents suspected of being abused, neglected and/or exploited. This does not take into account the number of calls received by state and local law enforcement agencies regarding elderly victims of crime.

**RECOMMENDATIONS OF
THE TASK FORCE**

RECOMMENDATIONS OF THE TASK FORCE

The recommendations of the Task Force are divided into six distinct categories representing key challenges faced by our state:

1. Enhancing Public Awareness, Oversight, and Accountability
2. Preventing Physical Abuse, Psychological Abuse, and Neglect
3. Preventing Financial Exploitation
4. Successfully Reporting Abuse
5. Effectively Investigating Abuse
6. Successfully Prosecuting Abusers

Following each recommendation the Task Force has included carefully debated and crafted descriptive rationales. These rationales contain information that will give readers a more thorough appreciation of the scope of the different challenges, as well as some of the logic behind the recommendations.

1. ENHANCING PUBLIC AWARENESS, OVERSIGHT, AND ACCOUNTABILITY

1-1. Create An Elder Abuse Authority. Elder Abuse prevention, intervention, investigation and prosecution efforts should be coordinated in order to provide better services to vulnerable older adults.

Rationale: As it stands today, Michigan's elder abuse services are located in several different departments and agencies. They all use different definitions of elder abuse, implement different parts of the system of prevention, treatment, investigation and prosecution of elder abuse and use different reporting systems. Coordination of these disparate efforts should result in better

protection of older adults and institute long term beneficial changes in the system.

The Governor should create or designate an organization, entity, and/or commission, including the public and private sectors, to be responsible for overseeing the implementation of Task Force recommendations, coordinating and integrating parties responsible for elder abuse prevention and protection services, integrating data systems, and conducting public awareness campaigns.

1-2. Conduct a Social Marketing/Public Awareness Campaign. Public awareness programs, such as media campaigns, education, training, and outreach, should be implemented to promote social responsibility in preventing and addressing elder abuse, neglect, and exploitation.

Rationale: Elder abuse is a complex issue encompassing physical, emotional, and sexual abuse, as well as neglect, self-neglect, and financial exploitation. As the population of elders increases over the next 20 years, the incidence of elder abuse is likely to rise significantly. The most significant factors influencing the rate of abuse are: the lack of awareness of what constitutes abuse, recognition that abuse may be a crime, and a simple method to report suspected abuse.

The Elder Abuse Authority should carry out social marketing and public awareness activities, including outreach on use of one statewide toll-free number for reporting elder abuse.

1-3. Promote a Centralized Toll-Free Number to Report Abuse. It is difficult for people to know where to call to report elder abuse. One place to call will simplify the reporting of abuse.

Rationale: Today in Michigan, there are many different toll-free numbers that take elder abuse calls. The public, however, does not know of these numbers or, if they do, do not know which of these numbers is best to call. The system for reporting and seeking help is fragmented and confusing. A well-known, easy-to-use, centralized toll-free number is needed. The Task Force recommends statewide promotion of the hotline used by Adult Protective Services (APS).

The Governor should designate the Department of Human Services (DHS) Adult Protective Services hotline as the statewide toll-free number to report abuse. DHS should explore options to expand service availability to handle increased calls and coordinate efforts between current abuse reporting functions across state agencies.

Actual Case of Abuse

ON THE PHONE

A woman calling herself Diane, Jean, Gloria Swanson, or Mary Jane is calling elders telling them they know her and have helped her before. This time she says she needs help to get to Chicago to take care of a daughter or sister who has been hurt. Who knows how many calls she is making and how much money she is collecting.

1-4. Develop an Integrated Web-based Database. Data on elder abuse services must be shared and synthesized in order to understand the full scope and depth of the problem in Michigan.

Rationale: Currently elder abuse prevention, treatment, investigation, and prosecution efforts are housed in different departments and entities in and out of state government. None of the reporting systems used by these entities can compile or share data with other systems. This makes assessing the prevalence of elder abuse and predicting the need for services impossible to calculate. To date, the lack of quality data on the many strategies to prevent and prosecute elder abuse in Michigan, including the lack of data on incidence and prevalence, is a key challenge to all future efforts.

The Elder Abuse Authority should convene an interagency workgroup including Departments of Community Health, Human Services, Information Technology and the Michigan State Police to examine ways in which to share data and develop a plan for an integrated reporting system.

1-5. Develop a Clearinghouse on Abuse and Neglect of the Elderly. Sharing information and enabling a web-based exchange of this information is an efficient way of establishing networks between all interested individuals and groups working to address elder abuse in Michigan.

Rationale: Currently, there is no easily accessible repository of Michigan-specific research or informational materials available to those working against elder abuse. This lack of information on the many programs, initiatives, and strategies to prevent, treat, investigate, and prosecute elder abuse in Michigan, is a significant challenge to an effective and efficient elder abuse prevention system.

The Elder Abuse Authority should convene an interagency workgroup including Departments of Community Health, Human Services, Information Technology and the Michigan State Police and other appropriate agencies and organizations to examine ways in which to share data and develop a plan for a clearinghouse on abuse and neglect of the elderly.

2. PREVENTING PHYSICAL ABUSE, PSYCHOLOGICAL ABUSE, AND NEGLECT

2-1. Develop Elder Abuse Training Curricula for Healthcare Professionals. Create and implement a curriculum to train healthcare professionals to understand and address the abuse/suspected abuse and neglect of elder patients.

Rationale: Michigan law requires that health professionals report elder abuse when it is suspected. Effective reporting requires a level of suspicion (knowing the signs and symptoms of abuse and the warning situations that lead to abuse), using tested methods of screening, diagnosis, and documentation, and being able to work with community resources (e.g., Adult Protective Services and law enforcement).

Understanding the issues of capacity, executive dysfunction (the inability to perform a set of cognitive skills including the ability to initiate and stop actions, monitor and change behavior as needed, and plan future behavior when faced with novel tasks and situations) and competence as they relate to an elder's situation is essential for health care workers to most effectively interact with the elderly population. Additionally, knowing how to report all forms of abuse and how to engage the community to assist in this reporting are all key to meaningful intervention and prevention on the part of these professionals.

The Elder Abuse Authority should facilitate the development and implementation of a curriculum to train healthcare professionals in understanding and addressing the abuse or suspected abuse of elder patients.

2-2. Define Rights for the Incapacitated. Once a person has a guardian appointed for them, they generally lose their rights to make even basic decisions. It is important when appointing guardians for people who are experiencing diminishing capacity, that whatever decisions they can still make are preserved.

Rationale: A “guardian” is a person appointed by a probate court and given power and responsibility to make certain decisions about the care of another individual. A full guardian can make all decisions for the individual. A limited guardian can only make decisions for the individual that the court allows.

Individual rights are routinely being denied to elderly citizens who have for reasons of bad health been deemed “incapacitated” and in need of a guardian. While in certain cases certain rights are being limited to provide for their safety, in many other cases there are no valid moral or ethical reasons for this denial. In addition to its negative effects on individual lives and society, this routine and unjust removal of basic rights makes incapacitated elders more likely to become victims of abuse and less likely to be able to report it.

Michigan's Estate and Protected Individuals Code (EPIC) currently does not clearly define what rights are retained by individuals who are deemed incapacitated and in need of a guardian, or what rights may be removed from these individuals. Furthermore, Michigan laws only require judges to play a role in granting a limited number of specific areas of authority to guardians, while leaving the rest to the guardian.

The Governor and legislature should adopt legislation that defines, identifies and limits

the rights that can be removed from persons who are deemed “incapacitated,” and that requires certain powers delegated to guardians to be specifically granted by the probate court on a case-by-case basis.

Actual Case of Abuse

IN A NURSING HOME

A nearly fully incapacitated victim, unable to move, is found in a compromising position. While it appears the patient has been sexually assaulted, the supervisor is not notified for an hour, the scene is cleaned up by the staff, and the police are not notified for seven hours. Thanks to one observant staff member who spots a healthcare worker leaving the room of the victim at a suspicious hour when his services are not scheduled, an arrest is made. The perpetrator’s profession allows him access to many nursing homes, and at all times of the day and night. The delays in reporting and the lack of a proper procedure nearly lead to a serial rapist remaining undetected, with free access to thousands of vulnerable elders.

2-3. Create a Workgroup on Home Health Agency/Direct Care Workers. There is a need to create a workgroup to review current practices and recommend changes in laws and regulations to prevent or reduce the risk of elder abuse, neglect, and exploitation by individuals and business organizations providing in-home services of any kind.

Rationale: For years, there has been a trend to increase community-based care for older individuals, reducing the need for institutional care. Older adults who require in-home assistance frequently have no family or other supports other than Home Health Agencies (HHAs) in place to assist them with their daily needs. This makes them particularly susceptible to abuse, neglect, or fraud by unscrupulous home health providers employed by such agencies. The workgroup would undertake a comprehensive and interdisciplinary review of existing laws/regulations in this area and make recommendations for changes.

The Elder Abuse Authority should create this workgroup and provide a report about changes in Home Health Agency law and regulations needed to protect vulnerable older adults.

2-4. Implement Recommendations of the 1998 Michigan Supreme Court Task Force on Guardianships and Conservatorships. There is a need to identify resources and support the implementation of the recommendations of the 1998 Michigan State Supreme Court Guardianship Task Force. Implementation of these recommendations will minimize or prevent abuse and neglect by guardians.

Rationale: The power that guardians and conservators have over the life of another person is profound, and it must be exercised with the utmost care and integrity. The probate courts have the responsibility to oversee guardians and conservators. To improve the process of appointing and monitor-

ing guardians and conservators, the Michigan Supreme Court convened a Task Force on Guardianships and Conservatorships that issued its Final Report in September of 1998.

Not all of the recommendations of this report have been implemented. Some of the eleven recommendations of this 1998 Task Force involve how to reduce unnecessary petitions for guardianships and conservatorships, other recommendations address how to reduce unnecessary appointments of guardians and conservators, and the rest focus on how better to manage guardianships and conservatorships.

The State Court Administrative Office should identify resources and implement the recommendations of the 1998 Michigan Supreme Court Task Force on Guardianships and Conservatorships .

2-5. Increase Information and Outreach on Caregiver Needs and Support Services.

There is a need to increase the amount of information and outreach provided to families and caregivers in order to prevent elder abuse resulting from caregiver stress.

Rationale: While there is no excuse for abuse, it must be acknowledged that the role of caregiver is very often extremely stressful. Many individuals react to stress by avoiding its source which can result in neglect, or by lashing out against its source resulting in violence. Guilt associated with such reactions leads to more abuse as these caregivers try to conceal the effects of their inappropriate reactions. The Task Force recognizes that caregivers need support and that this support is a key element in keeping abuse situations from arising and preventing ongoing concealment of these situations.

The Elder Abuse Authority should build on current caregiver support information and outreach efforts being carried out by Michigan agencies and organizations and seek

funding to expand information and outreach to caregivers.

2-6. Increase Information, Outreach and Increase Usage of Respite Services. For their own wellbeing as well as that of their families and other people around them, caregivers sometimes need time off. They are, however, widely unaware of ways in which respite services can be helpful.

Rationale: Most caregivers, especially spousal caregivers, do not get consistent help from other family members. One study has shown that as many as three-fourths of these caregivers are “going it alone.” Cultural norms among many of the older caregivers do not sanction the use of respite services, even when their stress is unmanageable. Elderly spousal caregivers with a history of chronic illness themselves who are experiencing caregiving-related stress have a 63 percent higher mortality rate, i.e., the death rate for caregivers in the same age cohort is higher than their non-caregiving peers.

Caregiving is no longer predominantly a woman’s issue; men make up 44 percent of the caregiving population. As society ages, more caregiving will be required. A 1999 study calculated that American business loses between \$11 billion and \$29 billion each year due to employees’ need to care for loved ones 50 years of age and older.

The the Elder Abuse Authority should build on current information and outreach on respite services being carried out by Michigan agencies and organizations and seek funding to expand information and outreach to caregivers and families.

2-7. Increase the Availability of Mental Health Services for Elders and Those Who Care for Them. More mental health resources and services should be devoted to older adults and their caregivers to help prevent elder abuse.

Rationale: Mental illness, including substance abuse disorders, increases vulnerability for all forms of abuse. A substantial portion of the older adult population (20 percent) experiences mental disorders that are not part of normal aging. As the number of older people increases, so will the role of mental illness in abuse. Provision of services to this population can prevent “excess disability,” a condition referred to in the David Satcher’s 1999 Surgeon General Mental Health Report that observes more functional impairment in individuals with severe and persistent mental illness than would otherwise be expected.

The Governor and legislature should explore options to increase funding to increase the availability and use of mental health services by elders and the people who care for them.

Actual Case of Abuse

BY A DISHONEST BUSINESS PROFESSIONAL

A man licensed as a mortgage salesman makes long visits to the homes of 38 elders to conduct business. He forges the names of those he visits on checks for large sums of money and deposits them in his own account. Because he has the time and freedom to cover his tracks, we may never know how much money he has stashed away before getting caught.

2-8. Increase Flexibility for Health Care Professionals to Report Suspected Cases of Financial and Psychological Abuse. Health care professionals should be empowered and be provided protection from liability to report suspected cases beyond only physical abuse.

Rationale: The role that healthcare professionals play in the lives of our state’s elders is so significant that they may often be the only ones in a position to recognize cases of abuse.

National statistics indicate that reports of elder abuse by healthcare professionals make up only 2 percent of the total reports. A significant reason for this is that health care professionals have not been trained to spot financial and psychological abuse and are, therefore, less likely to suspect such abuse. Because of the way in which the current law is written, there is a disincentive to report anything beyond physical abuse.

The Governor and legislature should adopt legislation designating healthcare professionals as mandatory reporters of all forms of suspected abuse and neglect, and protect them from liability.

2-9. Educate the Public on the False Claims Act. There is a need to promote prudent use of the Federal and Michigan False Claims Acts to root out and discourage cases of fraud related to abuse. Billing for goods and services that were never delivered or rendered, constitutes elder abuse.

Rationale: Billing the government for goods and services that were never delivered or rendered is itself a form of elder abuse. The False Claims Act specifically targets such billing, and investigating such claims often uncovers other forms of abuse. In discovering and exposing such false claims, investigators may also expose more direct psychological and financial abuse.

Under both state and federal false claims acts, it is possible for individuals to file suits against those defrauding the government in such ways and, in turn, to have the possibility of obtaining a portion of any settlement against such perpetrators.

The Elder Abuse Authority should conduct public awareness of, and increase the prudent use of, the Federal and Michigan False Claims Acts to root out and discourage cases of fraud.

3. PREVENTING FINANCIAL EXPLOITATION

3-1. Enlist the Help of Financial Institutions on Voluntary Projects to Combat Financial Abuse. A special project working with financial institutions to address financial exploitation needs to be undertaken.

Rationale: Financial institutions play an important role in protecting older people from exploitation. According to a report issued by the National Center on Elder Abuse, banks have the potential to be “the first line of defense against financial abuse, by identifying the abuse at its outset, before the elder’s assets have been dissipated.”

Bank reporting in both voluntary and mandatory reporting states has been very effective in increasing reports of financial abuse and preventing additional losses to the victims. Teller training, systems for expediting financial freeze orders, rewards for tellers who report suspicious activity, cooperative agreements with Adult Protective Services and law enforcement, secure accounts with features like notification of suspicious activity and limits on withdrawals are among the special activities that could be implemented.

The Office of Financial and Insurance Services should work with financial institutions on a voluntary basis to put safeguards in

place and encourage them to better protect their elderly customers against financial abuse.

3-2. Adopt the Uniform Securities Act in a Form That Treats Variable Annuities as Securities and Regulates Them Under the Authority of the State Securities Commissioner. Variable annuities should not be commonly sold to older adults for whom this product may be unsuitable.

Rationale: For the right person, variable annuities can be a sound investment option, yet a potentially abusive situation arises when their sale is inappropriate to the life circumstances of the elderly buyer. A variable annuity with a ten-year surrender penalty, for example, moves from a potentially good investment to a financially exploitative one when it is marketed to an 80-year-old. A second abusive practice is seen in high-pressured marketing pitches that fail to disclose the risks of investing in a variable annuity, risks which can be devastating to those on a fixed income. In the sale of variable annuities, Michigan seniors need enhanced protections in three areas: suitability, disclosure, and marketing.

The Governor and Legislature should adopt changes to the Uniform Securities Act that treats variable annuities as securities and regulates them under the authority of the State Securities Commission. The Office of Financial and Insurance Services should lead statewide educational and advocacy efforts to educate our elder population about variable annuities fraud.

3-3. Abusers and Exploiters Must be Prohibited from Inheriting from Those They Abuse. The Michigan Probate Code must be amended to prevent abusers from inheriting from their victims. The ability to inherit from one you have abused puts vulnerable elders at risk for abuse.

Rationale: Today in Michigan, a person can torture, abuse, neglect, or steal from a vulnerable adult and still inherit from that person, as long as the physical harm he or she perpetrated did not lead to death.

If the abuse involves a homicide, there is little pressure on law enforcement to keep an investigation or action going after the victim dies. A felon could see to it that the victim dies in a way that is not easily visible as a homicide. In this way, not only would such a serious criminal never be brought to justice, he or she would actually benefit financially from his or her actions.

The Governor and the legislature should revise the Michigan Probate Code to prohibit a person convicted of a felony crime from inheriting from his or her crime victim, unless the victim executes a will or codicil to a will indicating a specific intent to allow

Actual Case of Abuse

**BY A PAID, IN-HOME
CAREGIVER**

A 94-year-old patient with various illnesses, but mentally sound, is being cared for by a home healthcare worker. The woman being paid to care for her steals her credit card, and makes five transactions at a local store totaling \$6,500. The 94-year-old woman never realizes what is happening. The paid caregiver has many more patients.

the person to inherit from the victim, and the will or codicil is executed after the person's conviction.

3-4. Prohibit Professionals Whose License is Suspended for Financial Exploitation from Participating in Related Regulated Professions. Licensing guidelines must be changed so that persons who financially exploit elders in one licensed profession, cannot then go on to financially exploit them in another related licensed profession.

Rationale: Deceptive and illegal marketing techniques are used to sell a wide range of products to Michigan's elder population. The same techniques work for many products. There are multiple examples of a person being stripped of a license to sell one kind of product, only to turn right around and begin selling a different type of product in the same illegal manner. For example, a financial planner whose license was suspended for financial exploitation might also be licensed as an insurance salesperson and could then sell insurance products to older adults.

A person whose license is suspended for abuse, neglect, or exploitation of a vulnerable adult should have licenses suspended for the same time period in other related professions. Individuals should be barred from materially participating in such licensed businesses during the extent of the suspension. Furthermore, they should not be allowed to be an owner of such a business or be able to offer training to agents or salespersons in any field that involves marketing to elders or delivery of products or services to them.

The Governor and legislature should change licensing guidelines to ensure that a person who has lost his or her license in one area of business should not be able to engage in the same sort of activity in a different but related professional area.

3-5. Create Limits on Liquid Assets that a Guardian May Control. Since guardians are not required to file an accounting under the current system there should be a limit on the amount of liquid assets a guardian can control.

Rationale: Current law allows a guardian to handle the assets of his or her ward (the person for whom he or she is responsible) unless a conservator is appointed. Today, a guardian can go to the bank and take over the ward's accounts with no oversight or questions asked. There is no statutory dollar limit on the funds a guardian can control. Since the guardian is not required to account as substantial funds build up over time, there is no way to know whether a guardian is wrongly using another person's money. Some financial institutions place their own limits on how much a guardian can take over in an account, but this is not universal.

When it comes to the ward's funds, the law protects those professionals and officials who honor the powers of a guardian, unless they have direct knowledge of the appointment of a conservator. Since a parent has no duty in Michigan to become conservator over his or her child's funds of less than \$5,000, neither should a guardian of an adult.

Conservators should be appointed or the guardian should be required to account when he or she controls sums over \$5,000.

The Governor and the legislature should adopt legislation that limits the amount of liquid assets a guardian can control to a specific dollar amount and require the appointment of a conservator when the amount is over that limit. Guardians should be required to account for spending on the needs of their ward.

3-6. Consumer Protection Must be Strengthened to Protect Older Persons from Deceptive and Unfair Business Practices. The Consumer Protection Act should be amended to allow claims to be brought against persons who use unfair, deceptive, or unconscionable methods, acts, and practices in marketing legal and financial products to the elderly.

Rationale: A significant percentage of financial exploitation is done by allegedly legitimate businesses selling financial and legal products. A viable Consumer Protection Act provides the best protection against such abuses. It is also critical that the act applies to all sellers of such financial and legal products.

The Consumer Protection Act is the basic deterrent and remedy for unfair, unconscionable, and deceptive acts, methods, and business practices affecting consumers. It is much easier to prove a violation of this act than to prove a crime or fraud. This is true because there is no need to prove that the perpetrator made an overt lie, knowing it was a lie, with intent to defraud a person who reasonably believed the lie and was harmed as a result. The act allows recovery for acts, methods, or practices that have a probability of causing confusion over important information, whether there was an overt lie or not, whether or not the person actually knew it was false or misleading, and whether or not the consumer was actually fooled and harmed. It allows persons who spot dishonesty to act to protect their more susceptible neighbors. Statistics indicate that elderly consumers are more likely to be harmed by deceptive practices.

Michigan's Consumer Protection Act is not as effective as it could be. The courts have interpreted certain passages in the current language to create large exceptions. Courts have held that the act does not apply to activities that are authorized by law. It is very difficult to imagine any legal business activity that is not authorized under some law and, in

fact, Michigan's appellate courts have never ruled against a business that has claimed to be exempt after this particular interpretation was announced.

Another court interpretation casts doubt on whether the law applies to attorneys and other professionals, even to those who make outright lies about products. Victims are left

Actual Case of Abuse

BY A FAMILY MEMBER

An attorney is appointed conservator for an elderly woman and, without the knowledge of this attorney, the woman's nephew is appointed guardian on the same day. The attorney is not notified of this appointment until two days later. On day one, the nephew/guardian goes to the nursing home where his aunt/ward is staying, promptly takes the \$15,000 the nursing home is holding for her, and disappears, leaving his aunt alone. The nursing home claims no responsibility because there are no current statutes against such activity, and because it had no knowledge of the conservator's appointment. Later, after the professional conservator obtains a judgment against the nephew, the nephew files bankruptcy, having spent the whole \$15,000 on himself.

in limbo because such an outright lie is generally not malpractice, precisely because malpractice is based on the actual quality of legal work, not whether it was truthfully marketed. A recent amendment to the act arguably exempts all annuity salespersons.

The Governor and legislature should adopt legislation amending the Consumer Protection Act to eliminate exceptions which make it difficult for seniors to file claims against persons who engage in dishonest practices.

3-7. Provide Written Disclosure of How Joint Bank Accounts Operate. Financial institutions could better protect their customers from elder abuse if they were required to read a disclosure to the customer who wants to create a joint bank account. The customer should acknowledge in writing that they understand the true nature of the account.

Rationale: Elders are commonly encouraged by others to add another person (usually a relative) to their accounts. Sometimes this is so a family member can help pay the bills. Elders usually do not understand that they are giving that person the right to withdraw all of their money and the bank will not stop that person if he or she tries to do so. The elder's intention is often to allow that person to inherit the money, but not to withdraw it during his or her lifetime. While most banks allow accounts to be set up "in trust for" or "payable on death to" the intended beneficiary without allowing him or her access during the elder's lifetime, this option is not frequently explained or used.

The Governor and legislature should adopt legislation to require financial institutions to read a disclosure to a customer who wants to create a joint bank account and have the customer acknowledge in writing that they understand the true nature of the account.

3-8. Create a New Transfer on Death Property Ownership Option for Elders to Transfer Property to their Children and Avoid Probate.

Michigan needs a method to allow real property to automatically transfer to the named beneficiary upon the death of the owner. Methods currently available put vulnerable elders at risk of abuse.

Rationale: Today there are two common forms of ownership in real property: (1) Tenants-in-Common, and (2) Joint Tenants with Rights of Survivorship (JTWROS). Tenants-in-Common do not pass their interest in the property upon death, so families often use JTWROS to add intended beneficiaries upon death and to avoid probate. The problem is that JTWROS also creates current ownership in the property and the right to occupy the property immediately upon signing. If an elder adds his or her child as JTWROS and later wants to sell or mortgage the property, he or she cannot do so without the signature of that child. If the child insists on moving in, the child can do so without the elder's consent. Such a situation often unintentionally works to take away the independence of the elder.

The State of Ohio has adopted a statute and created a simple form that allows a person to name the upon-death beneficiary of his or her real property. This method solves all the problems that JTWROS creates. Under the new form of agreement, the elder owns and controls his or her property throughout his or her lifetime, and the child inherits automatically upon death, but has no rights to the property during the owner's lifetime.

The Governor and legislature should adopt legislation that enacts a form of deed to allow real property to automatically transfer to the named beneficiary upon the death of the owner.

3-9. Those Granted Power of Attorney Should be Required to Formally Acknowledge Their Understanding of the Duties and Responsibilities Involved in Serving as Power of Attorney.

Serving as Power of Attorney is a serious commitment and people serving as agents need to understand their responsibilities and duties.

Rationale: Powers of Attorney are one of the most popular instruments used to abuse elders.

Powers of Attorney are contracts that allow a person to conduct financial transactions on behalf of another, very often an elderly person. The person authorizing the other to act is the "principal." The one authorized to act is the "agent."

Individuals who obtain Powers of Attorney over another's affairs are not required to obtain any legal advice before or after doing so. The Power of Attorney document (POA) may or may not inform agents of their duties in language they understand. Mistakes are made because agents are not informed of their ability to hire attorneys, accountants, or other advisors to assist them in their duties. Vulnerable adults often sign multiple Powers of Attorney and create complex situations of uncertainty and insecurity for financial institutions.

The Governor and legislature should adopt legislation to require agents of Powers of Attorney to sign an acknowledgement of duties informing them of their responsibilities, using a standardized acknowledgment form.

3-10. Create a Power of Attorney Registry Workgroup. A workgroup should be created to make recommendations to the Governor on the form, content, location, purposes, and possible uses of a potential web-based database of Durable Powers of Attorney.

Rationale: Durable Powers of Attorney are widely acknowledged by experts on elder abuse, both nationwide and internationally, as one of the main vehicles used to exploit elders.

Currently, there are no sources of data on Durable Powers of Attorney (DPOA's) in Michigan. This data could be instrumental in better prevention of their use as vehicles of abuse. It would be useful to know how many DPOA's exist, demographics about those involved, if known criminals are using them, how much money and assets are being handled and how they may or may not be related to other forms of elder abuse.

The Elder Abuse Authority should create and facilitate a workgroup to make recommendations on the form, content, location, purposes, and possible uses of a potential web-based database of Durable Powers of Attorney.

3-11. Make Powers of Attorney More Uniform Across States and Mount an Effort to Develop National Standards for Powers of Attorney. Support efforts to make Powers of Attorney more uniform between states.

Rationale: It is difficult to codify changes in Powers of Attorney due to the fact that they vary so significantly from state to state. Any argument on behalf of change can instantly be brought into doubt by contradictory examples from other states, thus creating a stalemate in efforts to improve and modernize this practice. No state intends this to be the case, and all states suffer from this lack of uniformity. To date, forty-seven states have adopted the Uniform Power of Attorney Act, with some deviations.

The Governor and legislature should adopt legislation to create a Uniform Power of Attorney Act that is suitable for Michigan.

3-12. Increase Notary Public Knowledge in Order to Avoid their Unwitting Involvement in Elder Abuse. Persons serving as notary public can be instrumental in combating elder abuse, particularly financial exploitation.

Rationale: Incidents of older persons signing legal documents while in the hospital, under the influence of pain relievers, or still under the effects of medication following surgery, are quite common. Many documents signed in such situations are even notarized.

Under current law in Michigan there is no requirement that a notary determine if the person is awake or alert, nor any actual penalty for notarizing the signature of a person who is not awake or alert. The law also does not address how to handle situations where a person is deaf, demented, or otherwise in need of assistive communication.

The Governor and legislature should adopt legislation to add a requirement that the notary public may not attest to any document in which the person at issue does not objectively appear to understand the substance of the transaction. The Elder Abuse Authority should facilitate training on elder abuse for notaries.

3-13. Create an Elder Safety Workgroup to Look at Standardization of Financial Products to Better Protect the Financial Situations of Older Adults and Prevent their Use as Elder Abuse Vehicles. There may be new financial products or ways to convert current products through standardization that would make them abuse proof and safer for elders to use.

Rationale: Financial abuse is a growing area. While new efforts can be undertaken to deal with abusers, the products themselves need to be improved. Financial institutions, regulators, advocates and lawmakers should review and recommend strategies for the standardization of financial products that make them

safer products for use by elders and less prone to use by abusers. Such products would include checking accounts, online banking, debit/bank cards, savings and money market accounts, time deposit accounts, insurance products, and trusts.

The Office of Financial and Insurance Services should form a workgroup to explore the standardization of financial products that are safer for elders to use.

3-14. Eliminate Home Appraisal Fraud as a Vehicle for Elder Abuse. Home appraisals should be accurate, appraisers should not inflate property values, and lenders should not influence the appraisal process.

Rationale: There is substantial concern within the real estate services industry that some mortgage lenders pressure home appraisers to overstate the values of properties. Older homeowners are disproportionately targeted for and affected by this kind of exploitation. Exaggerated appraisal values harm older borrowers who end up with inflated mortgages and unnecessary debt. When the appraisal value of a home is inflated above its actual value to increase the amount of the loan, these borrowers find the equity in their home is less than the debt they must repay. If home values decline, the homeowner is trapped in a predatory mortgage and unable to refinance to a more favorable loan because they have insufficient equity. Being unable to refinance, older homeowners have increased risk of foreclosure.

A study conducted in late 2003 by the October Research Corporation surveyed 500 fee appraisers that had at least five years experience in the residential real estate appraisal business from across the country. Seventy-five percent of those surveyed said they felt pressured by a mortgage broker to “hit” a certain value; 59 percent said they felt pressure from a loan officer to inflate the values of properties, with 25 percent

responded that this happened nearly half the time.

The Office of Financial and Insurance Services should explore solutions to this problem, including requiring lenders to establish an automated system that selects appraisers from a panel. The Governor and the legislature should adopt legislation amending the licensing code to incorporate licensing provisions, which specifically sanction appraisers who inflate or manipulate appraisal values.

3-15. Amend the Uniform Commercial Code to Shift the Risk of Loss for Fraudulent Demand Drafts to the Payee’s Bank. Older adults whose identity has been stolen should not be penalized by banks who do not discover fraudulent demand drafts.

Rationale: One of the most elusive and increasingly popular means of financially abusing elders is the fraudulent demand draft. Demand drafts typically result from fraud begun through such means as telemarketing, phishing (a scam by which an e-mail user is duped into revealing personal or confidential information which the scammer can use illicitly), or other forms of identity theft. Because the perpetrators can be anywhere in the world, it is often difficult to catch them.

A demand draft looks like a check, but it is not an order from the account holder to pay someone else. Anyone in possession of an account number and other identification can ask their bank to demand money to be withdrawn from another person’s account. Demand drafts are often used to allow companies to withdraw funds from a checking account to pay a bill electronically. In a financial exploitation situation, the funds are deposited in the abusers account and often withdrawn immediately. Demand drafts have the same routing numbers as checks, but lack signatures. This generally goes unnoticed during processing because the procedure is electronic.

If someone creates a fraudulent demand draft on a person's account, the victim should not have to pay it. If funds have been removed from the victim's account, then they should be returned. This is not, however, reflected in Michigan's laws. Michigan still follows the default laws in the Uniform Commercial Code, which places the burden on the victim's bank. The problem is treated as similar to a forged check. The bank of the payee ought to know its customers and be responsible if one of its customers is in engaged in fraud. It is much more reasonable to shift the risk to the bank of the payee—the criminal who is getting the money—rather than the elder who didn't authorize the withdrawal of the money to begin with.

The Governor and the legislature should amend the Uniform Commercial Code to shift the risk of loss for a fraudulent demand draft to the criminal's bank, not that of the victim, and work with other states to promote similar uniform changes in laws across state lines.

3-16. Develop Best Practices and Disclosure Mechanisms for Financial Professionals.

Financial abuse is the fastest-growing type of abuse. There are ways in which financial professionals can help safeguard products and practices.

Rationale: While there are many industries that deal with seniors and their assets, the leading four are the:

- a) Lending & Mortgage Industry.
- b) Insurance Industry.
- c) Investment Industry.
- d) Trust & Estate Industry.

Each differs in the specific ways in which abuse can occur within them. Each has different forms of governmental agency

control, self-policing structure, and licensing/professional requirements.

Because the world of financial abuse is constantly changing, it is imperative that an ongoing workgroup be formed, unique to each industry. Each group would review products, services, or practices where abuse might occur, including development of best practices and disclosure mechanisms and guidelines.

The Elder Abuse Authority should develop ongoing workgroups to develop guidelines for each industry in regard to their elder customers and preventing financial abuse.

4. SUCCESSFULLY REPORTING ABUSE

4-1. Allow Nursing Home Employees to Report Suspected Elder Abuse Directly to the Appropriate State Agency, Instead of Going Through their Supervisor. Direct care workers in nursing homes should be allowed to report elder abuse directly to the appropriate agency of jurisdiction.

Rationale: The system for reporting abuse needs to be as timely and direct as possible. Current law discourages "whistleblowers" from reporting, which causes a delay in reports of abuse from getting to the correct agencies.

Currently, while most mandatory reporters are allowed to report anonymously by law, employees of nursing homes are exceptions. These individuals are required to report suspicious activity to their supervisors or the Director of Nursing, who then is required to report to the appropriate state agency. Directly reporting to the designated agency to respond to the alleged abuse is much more expedient and may remove a nursing home employee's fear of retaliation by their employer.

The Governor and legislature should adopt legislation that changes reporting requirements in nursing homes so that employees are required to report abuse to the agencies of jurisdiction without exception.

4-2. Financial Professionals and Employees of Financial Institutions Should Become Mandatory Reporters. Financial professionals and employees of financial institutions can be instrumental in preventing financial exploitation by reporting suspicious financial activity. As mandatory reporters they should not be held liable for good faith reports.

Rationale: Banks have been reluctant to support mandatory reporting laws because of liability concerns, even though the existence of a mandatory reporting law would actually provide banks with specific protection from liability. Banks also fear lawsuits by a customer who objects to the reporting. However, banks would be better able to defend themselves if they reported under a mandatory reporting law.

Three states have mandatory reporting laws for financial institutions. Of these, one contains a provision for liability protection.

The Governor and the legislature should adopt legislation to require banks and financial institutions to become mandatory reporters of suspicious financial activity directed against their elderly customers. This legislation should include waiver of liability for good faith reports, and provision of training for staff.

4-3. Unions Should be Involved in Training their Members Who are Direct Care Staff about Elder Abuse and Providing Support When Needed. Unions representing non-licensed direct care workers should be good partners in elder abuse training and support of workers.

Rationale: One of the biggest challenges in encouraging the reporting of elder abuse by non-licensed direct care workers is the fear direct care workers have of being marked as disloyal employees.

Unions are particularly well suited to manage such situations and to understand the needs of workers. They are well experienced in working with management to help both management and workers overcome potential and real challenges to providing quality care. Unions may also serve a key function in helping both workers and employers construct educational initiatives that can enhance the quality care level of their institutions as a whole.

The Elder Abuse Authority should develop partnerships with unions representing non-licensed direct care workers to enhance awareness of elder abuse and support them when they encounter elder abuse situations.

5. EFFECTIVELY INVESTIGATING ABUSE

5-1. Create a Special Prosecutor Program for Elder Abuse. Law enforcement and prosecutors in Michigan need assistance in conducting investigation and putting together successful prosecution of elder abuse.

Rationale: Preventing, identifying, and investigating cases of abuse requires a multi-disciplinary team approach (i.e., Adult Protective Services, law enforcement, prosecutors, judges, and other experts in diverse specialty areas such as sexual abuse, finance, medical examination, etc.). These multi-disciplinary teams require extensive specialized training and experience to be effective.

Coordinated, cross-disciplinary, specialized training is critical to support the creation of successful Elder Abuse Community Investigation Teams (Recommendation 5-3) to success-

fully investigate and prosecute elder abuse. A successful program dedicated to the development of such teams would:

- a. Use best practices developed by the Michigan model programs already in place for domestic violence and traffic safety.
- b. Coordinate development of a model, assessment, practice guidelines, and/or tools for assessing and making recommendations regarding capacity and competence status per Michigan's APS and guardianships laws.
- c. Design and implement protocols and comprehensive training programs for all members of multidisciplinary Elder Abuse Community Investigation Teams and track measurable results.
- d. Coordinate implementation of specialized in-service training for specific Community Investigation Team members, based on job requirements unique to the professional area of expertise of each team member.
- e. Develop and maintain a roster of specialized experts that can be used by Community Investigation Teams throughout the state, as needed, to address issues on specific cases.
- f. Develop a list of qualified experts who can serve as expert witnesses in elder abuse cases for prosecuting attorney's offices to enhance prosecution.

The Elder Abuse Authority should explore options to support a program dedicated to assisting prosecutors in constructing Elder Abuse Community Investigation Teams that can be designed to meet the unique resource requirements of each community.

5-2. Increase the Number of Adult Protective Services (APS) Workers. The number of APS caseworkers should be increased.

Rationale: Michigan's Department of Human Services (DHS) is responsible for the protection of vulnerable adults. Their job is complex and requires a wide range of skills and abilities to manage crises in familial and other settings.

APS cases are becoming increasingly complex and time consuming due to the nature of investigations. Financial abuse cases, in particular, take a significant amount of investigative time due to difficulty obtaining and tracking bank records and receipts, and lack of cooperation from clients, financial institutions, and law enforcement and other key parties. APS average monthly caseloads have increased by 300 cases since FY 1996 and now stand at 2,678 cases per month, and 14,641 referrals were made to APS in 2005. Self-neglect is the most frequently substantiated harm type in APS cases. Neglect ranks second and financial abuse is third. As the population ages, referrals and substantiated cases are expected to grow, particularly in the area of financial exploitation.

The Governor and legislature should explore ways to increase the number of Adult Protective Services caseworkers.

5-3. Develop Local Level Multi-disciplinary Elder Abuse Community Investigation Teams. Multi-disciplinary Elder Abuse Community Investigation Teams should be developed throughout the state to identify, investigate, and address all cases of suspected elder abuse within their own communities.

Rationale: According to best practice research conducted by the National Committee for the Prevention of Elder Abuse, hundreds of local communities, regions, and states around the country have been recognizing the need for a multi-disciplinary approach to preventing, identifying, and investigating cases of abuse. Multi-disciplinary teams are groups of professionals from diverse disciplines who come together to provide comprehensive assessment, consultation, and investigation in abuse cases. They may resolve difficult cases, promote coordination between agencies, provide a "checks and balances" mechanism to ensure that the interests and rights of all concerned parties are addressed, and identify service gaps and breakdowns in coordination

or communication between agencies or individuals. A complex case could require the expertise of a diverse range of specialists including Adult Protective Services representatives, law enforcement officers, prosecutors, judges, sexual abuse experts, financial and forensic accountants, medical examiners and investigators, and others.

The Elder Abuse Authority (with the help of the Special Elder Abuse Prosecutor Program outlined in Recommendation 5-1) should establish local multi-disciplinary Elder Abuse Community Investigation Teams throughout the State of Michigan to identify, investigate, and address all cases of suspected elder abuse within the community.

5-4. Develop and Implement Elder Abuse Training for Criminal Justice and Other Public Safety Officers. Except for minimal training provided to law enforcement in the basic police academy, criminal justice officers and other public safety officers receive no special training in elder abuse. Proper identification of elder abuse and proper investigation through continuing education is essential to providing appropriate help to victims.

Rationale: The jobs of criminal justice professionals such as law enforcement, prosecutors, and judges, as well as other public safety officers, such as firefighters, are ever increasing in complexity. One area of complexity as seniors live longer is how police are coping with a rising tide of crime against this population. Michigan State Police Uniform Crime Report figures indicate 19,014 such crimes were reported in 2003. Professionals interact with vulnerable adults on a regular basis, yet they receive little or no continuing education in recognizing and investigating vulnerable adult abuse. Training to recognize crimes against these vulnerable adults is critical to combating this problem.

The Michigan Commission on Law Enforcement Standards (MCOLES) sets the standards

for law enforcement officer selection, employment, training, and licensing. Restructuring the mandated curriculum to incorporate the abuse and exploitation of vulnerable adults will ensure that law enforcement is able to recognize and act appropriately when they encounter elder abuse situations.

MCOLES should explore ways to develop and implement training programs on elder abuse for their training constituencies.

5-5. Require Mandatory Reporting of Deaths in Facilities Caring for Vulnerable Adults.

Facilities (licensed or unlicensed) caring for a vulnerable adult are not required to report all deaths of residents that occur in the facility to law enforcement. Outside the facility, all deaths are to be reported to law enforcement, including death in a hospice so that law enforcement can determine whether or not the death warrants an investigation. Care facilities should be held to the same standard.

Rationale: Deaths in long term care facilities are not currently reported to law enforcement. Rather, the physician who works with the facility signs a death certificate and the body is released for burial. This means that the cause of death is not investigated by a trained professional to determine if the facility's negligence or active mistreatment contributed to or caused the resident's death.

Requiring the death scene to be frozen until law enforcement has been notified and has a chance to examine the scene would ensure that any criminal activity that might have shortened the resident's life is discovered. A trained law enforcement investigator would make the determination whether the body can be released for burial or whether the circumstances surrounding the death require an investigation by the medical examiner.

This law enforcement examination could be conducted within hours of reporting and would not interfere with the release of the

body in cases where the death is determined to result from natural causes. It will, however, ensure that cases of suspicious deaths are properly investigated before valuable evidence is lost.

The Governor and the legislature should adopt legislation to establish a mandatory requirement for facilities (licensed or unlicensed) caring for a vulnerable adult to report all deaths of residents that occur in the facility to law enforcement.

5-6. Increase Federal Funding to Support Elder Abuse Prevention, Intervention, Investigation and Prosecution Initiatives.

There is a need to find additional funding to support elder abuse prevention efforts in Michigan.

Rationale: For elder abuse to be most effectively confronted in Michigan, financial support of the federal government is needed.

The State should support initiatives to increase federal funding for Elder Abuse prevention, intervention and prosecuting activities.

6. SUCCESSFULLY PROSECUTING ABUSERS

6-1. Increase Sentencing Guidelines. Sentencing guidelines should be increased to reflect the pernicious nature of elder abuse.

Rationale: Criminals who victimize vulnerable adults, even repeat offenders, are rarely sentenced to prison under Michigan's sentencing guidelines. Those who steal hundreds of thousands of dollars from multiple elderly victims, rarely fall into a category in the sentencing guidelines that requires a prison sentence. Sentencing guidelines should be amended as follows:

- a. Amend Offense Variable (OV) 9 to apply to all crimes with multiple victims rather than just crimes where the victim is physically injured. Criminals who financially exploit the elderly often have multiple victims. OV 9 provides increasing points based upon the number of victims, but only if the criminal physically injured the victims. A criminal who goes from victim to victim should receive more punishment than the criminal who has only one victim, regardless of whether the victim is physically injured.
- b. Amend OV 10 to provide 40 points, rather than 15 points, when a criminal uses predatory conduct against a vulnerable adult. Criminals who target an elderly person or a vulnerable adult in order to take advantage of them should receive more than 15 points when they reduce a person to poverty. Testimony before the task force indicated that when an elderly person is cheated out of their life's savings and reduced to living on public assistance, they often fall into despair and lose the will to live. In many cases, these crimes lead directly to the death of the elderly victim, making them more akin to manslaughter or homicide, than mere property crimes.
- c. Amend OV 10 to provide 20 points, rather than 10 points, when the criminal exploits a victim's physical or mental disability, youth, agedness, or their authority status. When a criminal takes advantage of a vulnerable adult as a target of opportunity, rather than through predation, 10 points is inadequate to address the impact this conduct has on an elderly victim.
- d. Amend OV 13 to provide 50 points, rather than 10 points, for any combination of three or more crimes against a person or property where the victim was a vulnerable adult.
- e. Amend OV 16 to increase the points from 10 to 20 when the value of the property was \$20,000 or more or had special value. Amend OV 16 to provide 50 points when the amount of property stolen deprives a vulnerable adult of all income other than government assistance.

The Governor and the legislature should adopt legislation that revises sentencing guidelines for those who physically abuse and financially exploit vulnerable adults.

6-2. Increase Maximum Penalties for Abusers. Maximum penalties against abusers of vulnerable adults should be increased to ensure imprisonment for abusers.

Rationale: Vulnerable adult abuse in the 2nd degree occurs when a caregiver commits a reckless act or reckless omission that results in serious physical or serious mental harm to a vulnerable adult. It is a felony, punishable by up to four years in prison and/or a fine of up to \$5,000.

Vulnerable adult abuse in the 3rd degree occurs when a caregiver intentionally causes physical harm to a vulnerable adult. It is a misdemeanor, punishable by up to two years in prison and/or a fine of up to \$2,500.

Vulnerable adult abuse in the 4th degree occurs when a caregiver commits a reckless act or reckless omission that results in physical harm to a vulnerable adult. It is a misdemeanor, punishable by up to one year in jail and/or a fine of up to \$1,000.

Any caregiver, a person entrusted with the care of a vulnerable adult, who intentionally causes physical harm or recklessly causes serious physical or mental harm to a vulnerable adult, has breached that duty of care and should face consequences beyond a sentence of probation.

Currently, crimes with a maximum sentence of four years or less rarely, if ever, result in jail time, much less time in prison for an elder abuser.

The Governor and the legislature should adopt legislation that increases the maximum penalties for vulnerable adult abuse in the second, third, and fourth degree.

6-3. Allow Judges the Option to Order Consecutive Sentences. A person who preys on multiple vulnerable adult victims should be treated more severely than for a single offense.

Rationale: Due to the fixed financial situation in which most elders live, crimes against their possessions and funds are most often more devastating, both psychologically and physically, than they are to younger persons with time to re-earn money and recoup their losses.

Under current law, a person who commits crimes against two, ten, twenty or more vulnerable adults will be given concurrent sentences. That means, even though there were ten convictions, involving ten different victims, each with a sentence of two to ten years, the criminal will only serve one sentence of two to ten years. Criminals who prey on the elderly, and who go from victim to victim, should serve additional time for each crime. Giving the judge the discretion to make the sentences consecutive would prevent these criminals from being able to re-victimize the elderly, and would also send a powerful deterrent message.

The Governor and the legislature should adopt legislation that gives the sentencing judge the discretion to impose a consecutive sentence when the criminal commits crimes against more than one vulnerable adult.

6-4. Impose a Greater Penalty for a Wrongful Death in Unlicensed Care Facility. The penalty for a wrongful death that occurs in an unlicensed care facility should conform to the usual penalty for manslaughter.

Rationale: Section 750.145p of the Michigan Compiled Laws provides that when a resident of an unlicensed care facility dies due to a rules violation, the crime is a felony punishable by imprisonment for up to five years and/or a fine of up to \$75,000. The usual penalty for a death resulting from a violation of a law or rule is the penalty for manslaughter which is 15 years.

The Governor and the legislature should adopt legislation to increase the penalty for a wrongful death that occurs in an unlicensed care facility from a maximum of five years to 15 years.

6-5. Increase the Penalties for Obstructing an Investigation of an Adult Care Facility.

Obstructing investigations causes critical evidence to be lost in elder abuse cases and makes successful prosecution less likely.

Rationale: Section 750.145p of the Michigan Compiled Laws makes it a misdemeanor, punishable by up to two years in prison and/or a fine of up to \$25,000 for a caregiver or licensee to perform certain acts such as, commingling, borrowing or pledging resident funds, retaliating or discriminating against residents because they provide information to state officials or make a complaint and specifically of interest in elder abuse situations, if they intentionally interfere with or obstruct an investigation under the Adult Foster Care Facility Licensing Act.

It is a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$10,000 for a caregiver, or licensee to intentionally retaliate or discriminate against an employee if they provide information to the state or a local official, make a complaint against a facility or initiate, participate in or testify in an administrative or criminal action against the facility.

The Governor and legislature should adopt legislation that doubles the penalty for anyone obstructing an investigation of an adult care facility.

6-6. Increase Financial Exploitation Penalties. Penalties for stealing more than \$50,000 and \$100,000 from a vulnerable adult should be more stringent.

Rationale: Under Section 750.174a of the Michigan Compiled Laws, varying levels of punishment are created depending on the amount of theft from the vulnerable adult. The penalty for stealing \$20,000 or more is imprisonment for up to 10 years and/or a fine of up to \$15,000 or three times the value of the property stolen.

A ten-year penalty is inappropriate when \$50,000 or more is stolen. Accordingly, the Task Force recommends the creation of two new crime levels for this statute and other statutes, such as embezzlement, that are used to steal from vulnerable adults, as follows:

- A felony punishable by imprisonment for up to 15 years and/or a fine of up to \$50,000 or three times the value of the property stolen, if the property involved has a value of \$50,000 or more, but is less than \$100,000.
- A felony punishable by imprisonment for up to 20 years and/or a fine of up to \$100,000 or three times the value of the property stolen, if the property involved has a value of \$100,000 or more.

The Governor and the legislature should adopt legislation increasing the penalties for financial exploitation of vulnerable adults by creating two new crime levels.

6-7. Protect Vulnerable Adults from Caregiver Influence or Undue Influence.

Vulnerable adults are particularly susceptible to influence by caregivers and others. They are preyed upon when they are at their weakest and are least able to advocate for themselves.

Rationale: A commonly reported scenario is that a person changes his or her will on his or her deathbed or signs conveyances in a hospital. In some instances, this is the result of duress, fraud, or undue influence or the signer was incapacitated at the time. All of these claims are difficult to prove. A person

dependent upon another person for care is particularly susceptible to duress and undue influence.

To lessen the risk of exploitation the state should require the intervention of a disinterested professional. An attorney, for example, has the legal duty to determine what the client wants and to counsel the client about consequences of an action. While the intervention of an attorney is no guarantee of a free, informed choice, it is some proof that an attempt was made to ascertain the wishes of the client.

Not many would disagree that this makes sense for transactions that benefit caregivers who are not members of the immediate family. Whether to impose this requirement for family caregivers is more controversial. There may be a distinction between children who have remained involved as compared to the prodigal child who came into a parent's life at the last moment and suddenly became the apple of her eye. A generous bequest to a caregiver is not inherently abusive. It might be reasonable to say that a caregiver child has given up a lot to spend the time as a caregiver, and a favorable bequest might be a reasonable payment for such services, even if there was no contract stipulating that.

The Governor and the legislature should adopt legislation which classifies a caregiver of a vulnerable adult as a fiduciary. Any transaction executed by the vulnerable adult that provides a benefit to the caregiver that the caregiver would not have received, if the transaction had not taken place, should be presumed to be the result of undue influence. This presumption should not apply if an attorney signs an acknowledgment on the document that the attorney represented the vulnerable adult during the transaction.

6-8. Abandonment Should Become a Crime. Vulnerable older adults should not be at risk of being abandoned by their caregivers with no legal consequences.

Rationale: Too often, individuals caring for an elder abandon him or her in places such as hospitals or other care facilities against his or her will when there is no apparent impending or urgent health risk to that person or the caregiver.

The Governor and the legislature should amend the Adult Protective Services (APS) law to add "abandonment" to the definition of neglect by a caregiver of an impaired vulnerable adult and make it a crime to abandon an elder against his or her will.

6-9. Revise the Criminal Code to Make Fraudulently Obtaining a Signature an Act of Financial Abuse. Vulnerable adults who are frail or suffering from dementia are at high risk for signing away their rights or property to abusers.

Rationale: A significant amount of financial abuse is perpetrated by the simple act of getting the elderly victim to sign some piece of paper. This piece of paper may be a deed, a will, a Power of Attorney, or something else. Sometimes duress is involved, but more commonly the victim is tricked into signing it. Often the perpetrator tells the victim that the paper is something else. Such papers are also often signed because the perpetrator made some promise he or she had no intention of carrying out. Current law makes it difficult to use Section 750.273 to prosecute abusers.

The Governor and Legislature should adopt legislation that revises Section 750.273 of the Michigan Compiled Laws to make it more applicable to situations of financial abuse.

6-10. Create Expedited, Ex-Parte Financial Protection Orders. Without the ability to immediately secure a vulnerable adult's assets when financial abuse is suspected, it is often the case that all the money is gone by the time the criminal is apprehended.

Rationale: A financial freeze order is a good remedy for the specific and all-too-common situation in which:

- There is concern that a vulnerable adult's funds are at risk and quick action needs to be taken, and
- There is no time for a one- or two-week delay, in which the perpetrator could learn about and react to such a threat to his or her plans.

In the state of California, police officers and the heads of the county APS teams can order a freeze without notice and without judicial involvement. Due process is provided in that there is a right to a quick hearing after the freeze. This is similar to Michigan's Personal Protection Order (PPO) system, although a judge has to order a PPO. The hearing is normally "ex parte" in the sense that the perpetrator is not notified beforehand. There are procedures in Michigan for a temporary guardian in emergency situations, but no equivalent for rapid temporary conservatorships.

Development of expedited, ex-parte financial protection orders would ensure that all third parties served with such an order are enjoined from allowing any transfer of funds or change in status of property under their control, except in a case in which a special conservator appointed by the probate court may spend frozen funds on the vulnerable person's behalf if absolutely necessary. Such a freeze order would have the same binding effect as an order issued by a court. A copy of the order would be served on the vulnerable adult, any financial agents of the adult (including attorneys in fact), and anyone else claiming an ownership interest in the property subject to the order. Any of these individuals would be

able to request a hearing in probate court, which must be held within 14 days

The Governor and the legislature should adopt legislation that would authorize a local law enforcement officer or the head of the county APS to complete an Emergency Financial Freeze Order based on a good faith belief that a vulnerable adult's property is at immediate risk of loss.

6-11. Expand the Definition of Extortion in Michigan Law. Vulnerable adults are at high risk of being threatened with nursing home placement, guardianship or withdrawal of needed care or services, by abusers who want their money or their property.

Rationale: Many abusers extort money or property from a vulnerable adult by threatening to place him or her in a nursing home, to subject him or her to a guardianship, or by simply threatening to withhold food or medicine. This conduct, which is implicitly criminalized in Section 750.213 of the Michigan Compiled Laws, should be made explicit.

The Governor and the legislature should adopt legislation which expands the extortion statute, MCL Section 750.213 of the Michigan Compiled Laws, to include threatening a vulnerable adult with a nursing home placement or guardianship, or the threatened withdrawal of needed care or service, as extortion.

6-12. Provide Abused Elders the Option to Provide Videotaped Testimony. Vulnerable adults can be fearful or too frail to testify in front of their abuser and should be allowed to testify by videotape or closed circuit television.

Rationale: Section 600.2163a of the Michigan Compiled Laws allows the testimony of children or individuals with a developmental disability to testify by videotape or closed

circuit television when the court makes a finding that they will be unable to testify in the presence of the defendant. Elderly crime victims and vulnerable adults are often unable to testify in the presence of their abuser. The elderly victim has often been so controlled by his or her abuser, and he or she is often so afraid of the consequences of testifying in the presence of their abuser, that he or she refuses to testify. This effectively results in dismissal of cases through fear and intimidation.

Creating a special witness protection statute for the elderly and other vulnerable adults similar to Section 600.2163a of the Michigan Compiled Laws would assist the courts truth-finding function, better protect elderly crime victims, and hold their abusers accountable. Such a statute would not violate the 6th amendment right to confrontation, so long as the statute requires the court to make the finding required by *Maryland v Craig*, 497 US 836 (1990).

The Governor and the legislature should adopt legislation to allow the testimony of a vulnerable adult to be presented by video-tape or closed circuit television.

6-13. Criminal Charges Should Not Have to be Initiated by the Vulnerable Adult. Vulnerable adults are often under the control of their caregiver and if the caregiver can prevent the vulnerable adult from signing a complaint, then no criminal charges will be issued.

Rationale: For elder abuse to be investigated, it is often necessary for the victim to file a formal complaint. For a wide range of reasons, many elders are unable or afraid to do so.

Section 764.1a of the Michigan Compiled Laws requires a magistrate to accept a complaint charging domestic violence that is presented by a police officer upon information and belief. The magistrate cannot require the domestic violence victim to come to court and swear out the complaint. The same

protection and consideration should be extended to elderly victims of crime.

The Governor and the legislature should adopt legislation that makes it unnecessary for a magistrate to require a vulnerable adult to sign a criminal complaint before charges can be brought against an abuser.

6-14. Establish a State-wide System of Restitution. Financial exploitation is extremely harmful to vulnerable adults who cannot replace money lost to abusers. A restitution system to increase the collection of restitution to victims and recover court fines and fees from convicted offenders could help victims to recover financially.

Rationale: According to the National Committee for the Prevention of Elder Abuse, the issue of restitution is increasingly being discussed within the field of elder abuse and adult protective services as more cases of financial elder abuse are handled by the criminal justice system. Restitution is a mechanism through which offenders compensate victims for losses that result from crime. Restitution can include payment of money by the offender to the victim, payment by the offender to community programs, service performed by the offender for the victim (such as repairing damage to the victim's personal property), or service the offender performs for the community. The right to receive restitution is widely recognized but a variety of problems limit the effectiveness of the current restitution process. These include the failure of many courts to order restitution and the absence of efficient systems to ensure that restitution orders are enforced.

Currently, Michigan has no system to collect restitution from offenders on behalf of victims of financial exploitation. While not specifically designed to address elder abuse and financial exploitation, Colorado has an extremely successful Collections Program in

place which collects restitution from all offenders convicted of a crime against a victim. This program can serve as a model for Michigan. This program pays for itself, covers court costs, and generates revenue for other programs (i.e., juvenile diversion programs, probation, parole, etc.). Collection strategies are designed to obtain payment in full in the shortest repayment period. Financial disclosures are mandatory and collection efforts can require liquidating accounts/assets, obtaining employment, attaching wages, garnishing bank accounts, applying liens against property/motor vehicles, intercepting state tax refunds/lottery winnings/unclaimed property, suspending drivers' licenses and revoking probation.

The Governor and the legislature should adopt legislation establishing a restitution system to increase the collection of restitution to victims and recover court fines and fees from convicted offenders.

6-15. Explore Ways in Which to Improve Access to Justice by Developing Elder Friendly Court and Administrative Hearing Procedures. Use of assisted listening devices, wheelchair or walker access to courtrooms and witness boxes and other environmental improvements would make it easier for seniors to participate more fully and receive true access to the justice system.

Rationale: A major difficulty in prosecuting elder abuse is the fact that courtrooms themselves are spaces that are very unfriendly to elders who need to participate in legal proceedings.

Many claims about elder abuse and financial exploitation involve licensed professionals who must undergo disciplinary hearings. There is an opportunity to begin making courtrooms more senior friendly by starting with spaces where such hearings are held. Nationally, efforts are underway to make courtrooms more elder friendly. Stetson

University in Florida recently built such a facility which can serve as a model for other such facilities.

While it would be difficult to modify most courthouses around the state, it might be easier to modify a few places where administrative hearings could be held to make them more accessible to elderly victims, including accommodations for people with visual and hearing impairments.

The State Office of Administrative Hearings & Rules (SOAR) should explore ways to create an elder-friendly environment in proceedings investigating claims of elder abuse or exploitation of seniors that make it easier for seniors to participate more fully and receive true access to justice.

6-16. Define Unjust Enrichment in the Criminal Code. Caretakers often exploit a vulnerable adult and appropriate their property for their own personal use. It is unclear what degree of appropriation constitutes "unjust enrichment" under the criminal code.

Rationale: Section 750.174a of the Michigan Compiled Laws makes provision against "unjust enrichment" for the purposes of obtaining or using, or attempting to obtain or use a vulnerable adult's money or property to directly or indirectly benefit the criminal. The statute does not, however, define "unjust enrichment," leaving attorneys, judges and juries to speculate on whether the facts of a particular case amount to unjust enrichment.

The Governor and the Legislature should adopt legislation to amend Section 750.174a of the Michigan Compiled Laws to define the term "unjust enrichment" to assist in the investigation and prosecution of crimes against elderly victims.

6-17. Adopt a Definition of Consent to Assist in Investigation and Prosecution of Crimes against Elderly Victims. A vulnerable adult who consents to the transfer of their property should do so knowingly, intelligently and voluntarily.

Rationale: Abusers use “consent” as a common defense to charges of financial exploitation of elders. This then begs the question ‘How can it be financial exploitation if he/she agreed that I could have it?’

Consent involves the cognitive ability to realize probable consequences and to weigh them, the expenditure of appropriate mental effort in doing so, awareness of one’s ability to refuse to agree, the physical ability to refuse to agree, freedom from duress and undue influence, and an understanding of what the agreement entails.

In Michigan, there is no clear, uniform sense of consent in the law. In court proceedings, if the question is whether there was consent to a search by the police, for example, very little is required to find consent. On the other hand, when the question is consent to sexual intercourse, the threshold is rather high. The test for consent to alleged financial exploitation ought to be held to the higher standard, rather than the lower standard. Mere acquiescence or a failure to strenuously object is not sufficient to define consent.

The Governor and the legislature should adopt legislation to define “consent” by creating a legal definition of what is required for a vulnerable adult to be said to consent to an activity or action.

6-18. Amend the Adult Protective Services (APS) Law to Make Isolation of a Vulnerable Adult Against Their Will Part of the Definition of Abuse. Isolation is the first step in the abusers efforts to control a vulnerable adult, cutting them off from family, friends and potential sources of help.

Rationale: One of the most disturbing and hard-to-spot forms of abuse is the deliberate isolation of an elder from others to hide abuse or to further exploit him or her.

Isolation is perhaps the most critical component to undue influence, according to recent studies. If an elder has free access to information, it is much less likely that he or she will fall sway to the influence of another. A vulnerable person needs to be able to contact others for help and advice and certainly needs free access to others to complain about ongoing or suspected abuse or exploitation. Protection from enforced isolation should be added both to the Social Welfare Act and the Criminal Code.

The Governor and the legislature should adopt legislation to amend the Adult Protective Services (APS) law to add “isolation when intentional and against their will” to the definition of abuse of an impaired vulnerable adult. Thereby, making it a crime to prevent access to a vulnerable adult by others, (unless authorized by court order) or to prevent communication to or from a vulnerable adult by means of the mail, telephone, or any other means, including electronic means.

6-19. Create a Special Hearsay Exception to the Rules of Evidence for Statements of an Elder Person. Unfortunately, elderly persons often die or become incompetent between the time of a crime and the time of a trial.

Rationale: Tragically, elderly crime victims too often die or become incompetent between the investigation of the crime and trial. An exception to the hearsay rule for their statements would allow prosecutors to continue the case and hold the criminal accountable. It is recognized that if the statement was made to a police officer and is testimonial, it would not be admissible under *Crawford v Washington*, 541 US 36 (2004),

but in many cases the statements are made to family members, friends, and caretakers, and therefore would not be prohibited by Crawford.

The Governor and legislature should adopt legislation to create a special hearsay exception to the rules of evidence for statements of an elderly person who dies before trial, or whose physical or mental state deteriorates to the extent that they cannot testify. This will prevent a person's age and health from being used as a strategy to avoid prosecution.

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AN OVERVIEW OF THE PROCESS USED BY THE TASK FORCE

EXECUTIVE ORDER 2005-11

OFFICE OF SERVICES TO THE AGING MICHIGAN TASK FORCE ON ELDER ABUSE

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 4 of Article V of the Michigan Constitution of 1963 authorizes the establishment of temporary commissions or agencies for special purposes;

WHEREAS, Section 17 of Article V of the Michigan Constitution of 1963 empowers the Governor to present to the Legislature information as to the affairs of the state and recommend measures that the Governor considers necessary or desirable;

WHEREAS, elder abuse is a complex health and social problem involving harm or threatened harm to a senior citizen, including neglect by a person responsible for the elder's health or welfare and exploitation involving misuse of the elder's funds or property;

WHEREAS, experiences in addressing child abuse and domestic violence suggest that the number of instances and severity of elder abuse can be reduced by developing coordinated and effective adult protective services, criminal justice, and social services programs, including prevention, training, investigation, and victim support;

WHEREAS, establishment of a task force examining issues relating to elder abuse will assist the state in identifying new resources,

best practices, and necessary changes in law, policies, and practices to assist in the prevention of elder abuse;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

- A. "Office" means the Office of Services to the Aging created within the Department of Management and Budget under Section 5 of the Older Michigánians Act, 1981 PA 180, MCL 400.585, and transferred to the Department of Community Health by Executive Order 1997-5, MCL 400.224.
- B. "Task Force" means the Michigan Task Force on Elder Abuse created under this Order.

II. CREATION OF THE MICHIGAN TASK FORCE ON ELDER ABUSE

- A. The Michigan Task Force on Elder Abuse is created as an advisory body within the Office.
- B. The Task Force shall consist of 15 residents of this state appointed as members of the Task Force by the Governor.
- C. In addition to the members appointed under Section II.B, the Director of the Office, the Director of the Department of

Community Health, the Director of the Department of Human Services, the Director of the Department of State Police and the Commissioner of Financial and Insurance Services, or their designees, shall serve as non-voting, ex officio members of the Task Force.

- D. Members of the Task Force appointed by the Governor under Section II.B shall serve at the pleasure of the Governor.
- E. A vacancy on the Task Force shall be filled in the same manner as the original appointment.

III. CHARGE TO THE TASK FORCE

- A. The Task Force shall act in an advisory capacity and shall do all of the following:
 - 1. Review existing state efforts regarding the prevention and prosecution of elder abuse including physical abuse, emotional abuse, neglect, sexual abuse, and financial abuse and exploitation.
 - 2. Identify and prioritize pressing issues and significant challenges that must be addressed to protect Michigan's vulnerable adults from abuse, neglect, and financial exploitation.
 - 3. Review laws, policies, and practices of other states and make recommendations for changes in Michigan to address elder abuse, neglect, and financial exploitation.
 - 4. Recommend a process for the development of a widely accessible reference database of current information and research concerning elder abuse.
 - 5. Provide recommendations to promote effective communications and coordination of efforts between the public and private sectors at both the state and local levels regarding the prevention and effective prosecution of elder abuse.

- 6. Review and provide advice regarding the potential effectiveness of a public-private communications network throughout Michigan related to elder abuse, including physical abuse, emotional abuse, neglect, sexual abuse, and financial abuse and exploitation.
 - 7. Review other state practices and recommend approaches to develop dedicated local investigative teams that have the tools and legal authority necessary to effectively identify, investigate, and prosecute elder abuse, neglect, and financial exploitation.
 - 8. Identify new opportunities to support and expand research studies that document the scope and depth of elder abuse, neglect, and financial exploitation in Michigan.
 - 9. Provide recommendations for the development of training and technical assistance materials for investigation and enforcement professionals.
 - 10. Provide recommendations for the development of a plan to generate public awareness of the scope of elder abuse, such as recommendations for public service announcements, editorials, community presentations and forums, website development, publications, and other materials to provide relevant information to the public.
 - 11. Based on the foregoing, make recommendations to the Governor.
- B. The Task Force shall provide other information, recommendations, or advice as requested by the Governor or the Director of the Office.
 - C. The Task Force shall complete its work and issue a final report and recommendations, including any proposed changes in law, to the Governor by May 31, 2006.

IV. OPERATIONS OF THE TASK FORCE

- A. The Task Force shall be staffed and assisted by personnel from the Office as directed by the Governor, subject to available funding. Any budgeting, procurement, and related management functions of the Task Force shall be performed under the direction and supervision of the Director of the Office.
- B. The Task Force shall adopt procedures consistent with Michigan law and this Order governing its organization and operations.
- C. The Governor shall designate one of the members of the Task Force to serve as its Chairperson. The Task Force may select from among its members a Vice-Chairperson.
- D. The Task Force shall select from among its members a Secretary. Task Force staff shall assist the Secretary with record-keeping responsibilities.
- E. A majority of the members serving on the Task Force constitutes a quorum for the transaction of the Task Force's business. The Task Force shall act by a majority vote of its serving members.
- F. The Task Force shall meet at the call of the Chairperson and as may be provided in procedures adopted by the Task Force.
- G. The Task Force may establish committees and request public participation on workgroups as the Task Force deems necessary. The Task Force may also adopt, reject, or modify any recommendations proposed by a committee or a workgroup.
- H. The Task Force may, as appropriate, make inquiries, studies, investigations, hold hearings, and receive comments from the public. The Task Force may also consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, organized labor, government agencies, and at institutions of higher education.

- I. Members of the Task Force shall serve without compensation. Members of the Task Force may receive reimbursement for necessary travel and expenses according to relevant statutes and the rules and procedures of the Department of Management and Budget and the Civil Service Commission, subject to available funding.
- J. The Task Force may hire or retain contractors, sub-contractors, advisors, consultants, and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the Task Force and the performance of its duties as the Director of the Office deems advisable and necessary, in accordance with this Order, and the relevant statutes, rules, and procedures of the Civil Service Commission and the Department of Management and Budget.
- K. The Task Force may accept donations of labor, services, or other things of value from any public or private agency or person.
- L. Members of the Task Force shall refer all legal, legislative, and media contacts to the Office.

V. MISCELLANEOUS

- A. All departments, committees, commissioners, or officers of this state or of any political subdivision of this state shall give to the Task Force, or to any member or representative of the Task Force, any necessary assistance required by the Task Force, or any member or representative of the Task Force, in the performance of the duties of the Task Force so far as is compatible with its, his, or her duties. Free access shall also be given to any books, records, or documents in its, his, or her custody, relating to matters within the scope of inquiry, study, or investigation of the Task Force.

- B. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order
- C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order.

Given under my hand and the Great Seal of the State of Michigan this 24th day of May, in the year of our Lord, two thousand and five.

TASK FORCE MEETINGS

The Task Force began its work in June of 2005, conducting monthly Task Force meetings that were held in Lansing or the Detroit metropolitan area. The public was invited to attend the meetings and had the opportunity to present personal testimony or provide comments to the Task Force. The agenda for each meeting was designed around a specific topic relevant to understanding, preventing, investigating, or prosecuting elder abuse. Forty-six experts were invited to make formal presentations to the Task Force and participate in panel discussions.

The Agenda Format for Monthly Task Force Meetings was as follows:

- Presenters were selected who could:
 1. Define the problem and establish common language and common understanding for each topic area,
 2. Describe the current situation in Michigan for each topic area, and
 3. Provide an overview of national best practices and model programs from other states.
- Q&A Panel Discussion with the Experts
- Small Group Task Force Discussion to determine how this information could contribute to the work of each committee.

The Topics and Expert Presenters at Task Force Meetings Included:

STATE AGENCIES: THEIR ROLE AND EXPERIENCE IN DEALING WITH ELDER ABUSE

- Linda A. Watters, Commissioner, Office of Financial and Insurance Services
- Patrice Eller, Deputy Director, Michigan Department of Human Services
- Sergeant Michele Hernandez, Michigan State Police
- Lynne McCollum, Legal Services Developer, Michigan Office of Services to the Aging

EXISTING STATE LEVEL INITIATIVES TO PREVENT ELDER ABUSE

- Sheriff Joseph Underwood, TRIAD
- Brad Vauter, State Elder Abuse Quick Response Team (SEAQRT)
- Josh Ard, SEAQRT

EXISTING LOCAL INITIATIVES IN PREVENTING ELDER ABUSE

- Kym Worthy, Wayne County Prosecutor, Wayne County Elder Abuse Task Force
- Sheriff Robert Pickell, Genesee County Task Force on Elder Abuse
- Lynne Alexander, Oakland County Elder Abuse Task Force
- Jean Peters, Northwest Michigan Elder Abuse Prevention and Awareness Task Force

GUARDIANSHIP AND ALTERNATIVES: NATIONAL AND STATE PERSPECTIVES

- Sally Hurme, AARP and the National Guardianship Association
- Honorable Pamela Gilbert O'Sullivan, Macomb County Probate Court
- Carol Morris, J.D., Morris and Morris, PC

- Karen Schrock, Director, Adult Wellbeing Services
- Brad Geller, Ombudsman, Long-term Care Ombudsman Program
- Doug Chalgian, Elder Law Attorney
- Cherie Mollison, Division Director, OSA, and National Guardianship Foundation
- Sue Darling, Probate Register, Kalamazoo County and Michigan Guardianship Association

AUTONOMY VS. PROTECTION

- Duncan Wyeth, Executive Director, Michigan Commission on Disability Concerns
- Cynthia Farrell, Manager, Adult Services, Department of Human Services
- Rachel Richards, Analyst, Adult Protective Services, Department of Human Services
- Theresa Root, Adult Protective Services Worker, Van Buren County Department of Human Services
- Nancy Alterio, Executive Director, Commonwealth of Massachusetts, Disabled Persons Protection Commission and Board Member, National Adult Protective Services Association (NAPSA)
- Peter Lichtenberg, Director, Wayne State Institute of Gerontology and Chair, Michigan Dementia Coalition

HOLDING ABUSERS ACCOUNTABLE

- David McClorey, Principal Attorney, Wayne County Prosecutor's Office Elder Abuse Unit
- Hermina Kramp, Section Manager, Career Development, Michigan Commission on Law Enforcement Standards (MCOLES)
- Detective Sergeant David Kelly, Major Case, Livonia, Special Investigative Division, Michigan State Police
- Ron Frantz, Ottawa County Prosecutor, President, Michigan Prosecuting Attorneys' Association

- Jeff Sauter, Eaton County Prosecutor, Past President, Michigan Prosecuting Attorneys' Association
- Tom Robertson, Executive Secretary, Michigan Prosecuting Attorneys' Coordinating Council

OUR SECRET SHAME: ABUSE, NEGLECT, AND PREMATURE DEATH OF THE ELDERLY

- Carmel Bitono Dyer, MD, Assistant Professor of Medicine at Baylor College of Medicine, Houston, Texas, Director of the Harris County Hospital District Geriatrics Program and Co-Director of the Texas Elder Abuse and Mistreatment (TEAM) Institute.
- Deb Spangler, Aging and Disability Program Specialist, Wisconsin Coalition Against Domestic Violence, Madison, Wisconsin, and National Clearinghouse on Abuse in Later Life
- Shelia Hankins, Safe Havens Project Director, Michigan Domestic Violence Prevention and Treatment Board, Michigan Department of Human Services
- Lauren Swanson, Adult Abuse and Neglect Prevention Project (AANP), Michigan Office of Services to the Aging
- Ljubisa Dragovic, MD, Chief Forensic Pathologist/Medical Examiner, Oakland County

WHO YOU GONNA TRUST? FINANCIAL EXPLOITATION OF THE ELDERLY

- Roger Budzynski, Certified Financial Planner, Securities America, Inc.
- Richard Lavolette, Chief Deputy Commissioner, Office of Financial and Insurance Services, Department of Labor and Economic Growth
- Chad Hartwick, Securities Examination Manager, Securities Division, Office of Financial and Insurance Services, Department of Labor and Economic Growth
- Linda Cena, Director, Securities Division, Office of Financial and Insurance Services, Department of Labor and Economic Growth
- Cathy Kirby, Deputy Commissioner, Consumer Services Division, Office of Financial and Insurance Services, Department of Labor and Economic Growth
- Josh Ard, Howard and Howard Law Offices
- Amy Tripp, Chalgian and Tripp Law Offices, PLLC
- Mary M. Fowlie, Group Senior Vice President, LaSalle Bank Midwest, Chairperson Elect, Michigan Bankers Association
- John T. Llewellyn, Vice President, Government Relations, Michigan Bankers Association
- Mike DeFors, Director of Regulatory and Legal Affairs, Michigan Credit Union League

TASK FORCE COMMITTEES

The Task Force established four committees to meet regularly to address the ten deliverables, research emerging trends, evaluate current prevention strategies, and develop preliminary recommendations for review by the Task Force in April and May, 2006. The mission of each committee was as follows:

PUBLIC AWARENESS COMMITTEE

This committee was charged with addressing the need to raise public awareness about issues of elder abuse in order to bring more attention to the growing numbers of those experiencing abuse. It also focused on raising awareness to set the stage for development of the same level of response as is found in child abuse and domestic violence.

PUBLIC AND PRIVATE SECTOR PARTNERSHIPS COMMITTEE

This committee was charged with exploring the nexus between public and private sector needs, responses, and responsibilities relative to elder abuse. The issues dealt with by this committee resulted in recommendations that identify gaps in the current system, propose ways in which to close those gaps, and identify a plan to more closely knit public and private sector responses into a comprehensive system.

INVESTIGATIVE TEAMS AND LAW ENFORCEMENT TRAINING COMMITTEE

This committee was charged with exploring facets of successful local investigative teams, both in- and out-of-state, and proposing models to be replicated throughout Michigan. It was also responsible for making recommendations for comprehensive, integrated training programs on all aspects of elder abuse for law enforcement officials and prosecutors. In addition, it was meant to offer recommendations about how to coordinate law enforcement and prosecution efforts to ensure successful prosecution of abusers.

DATABASE, RESEARCH, AND LEGISLATIVE ISSUES COMMITTEE

This committee served in a dual role. First, this committee was charged with reviewing the laws of other states concerning elder abuse and determining how these laws can inform

changes in Michigan. In addition, this committee was charged with discussing and recommending (a) which kind of database is needed, (b) how to develop this database of information, (c) how best to identify the target audience for the database, and (d) how and where this database will be maintained. In conjunction with its role in comparing and informing legislation, this committee sought to serve as a clearinghouse for issues and ideas for all Task Force committees.

PUBLIC HEARINGS

In addition to committee work, a series of three public hearings to help refine the final report were held in St. Ignace, Grand Rapids and Detroit during May, 2006.

RECOMMENDATION APPROVAL PROCESS

Each Committee presented its draft recommendations for final approval by the Task Force on May 18, 2006. In subsequent meetings held in June 2006, the Task Force reviewed and gave instructions for revising drafts of this report, decided on the prioritization of its recommendations, and approved this report.

VALUED CONTRIBUTORS TO TASK FORCE EFFORTS

TASK FORCE MEMBERS

Dorothy E. Jones, Chairperson
Retired Staff, United Auto Workers
Ypsilanti, MI

Roxanne Chang, Attorney
Michigan Dementia Coalition
Plymouth, MI

Kay Hoffman, Chief of Police
Lansing Township Police Department
Lansing, MI

Kathleen Holycross, President & CEO
Visiting Nurse Association of Southeast
Michigan
Oak Park, MI

**Diana C. Jones, Vice President Community
Affairs**
Blue Cross Blue Shield of Michigan
Detroit, MI

Jonathan S. Mead, Executive Director
UPCAP (Upper Peninsula Commission for
Area Progress)
Escanaba, MI

Carol A. Morris, Attorney
Morris and Morris, P.C.
Livonia, MI

The Honorable David J. Newblatt
Genesee County Circuit Court
Flint, MI

Jules Olsman, Attorney
Olsman, Mueller, and James, P.C.
Berkley, MI

Sheriff Robert J. Pickell
Genesee County Sheriff's Department
Flint, MI

Alex Romero, Director
Wayne County Senior Citizens Services
Detroit, MI

Anita Salustro, Associate State Director
AARP
Lansing, MI

Karen Schrock, President & CEO
Adult Well Being Services
Detroit, MI

Dr. Susan Sevensma, DO
Department of Medical Education
MetroHealth Hospital, Grand Rapids

Nancy A. Smit
Social Worker with the Nottawaseppi Huron
Band of Potawatomi Indians
Plainwell, MI

Priscilla Strakovits, CPA
Certified Senior Advisor
Sallan, Nemes, Lyman and Strakovits, CPAs,
PC
Farmington Hills, MI

Kym Worthy
Wayne County Prosecutor
Detroit, MI

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Department of Human Services

Cynthia Farrell, Manager
Department of Human Services

Sgt. Michele Hernandez
Michigan State Police

Judith King, Consumer Outreach Coordinator
Office of Financial & Insurance Services

**Lynne Weinstein McCollum, Legal Services
Developer**
Michigan Office of Services to the Aging

Wendi Middleton, Associate Division Director
Michigan Office of Services to the Aging

Cherie Mollison, Division Director
Michigan Office of Services to the Aging

Rachel Richards, Department Analyst
Adult Protective Services
Department of Human Services

Tom Robertson, Executive Secretary*
Prosecuting Attorneys Coordinating Council

Carol Stangel, Administrative Support
Michigan Office of Services to the Aging

**Drew Alan Walker, Task Force Project
Director**
Michigan Office of Services to the Aging

SPECIAL ADVISOR TO THE TASK FORCE

Josh Ard, Attorney*
Howard & Howard

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Katy Graham

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Honorable Philip Harter

Alison Hirschel

Susan Steinke

Kate White

ADVISORS AND KEY SUPPORTERS

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Nancy Alterio
Bill Campbell
Linda Cena
Doug Chalgian
Delores Coulter
Bryan Crenshaw
Sue Darling
Mike DeFors
Virginia Dize
Jennifer Duane
Carol Dye
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Duncan Wyeth
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Natalie Zappella

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SUPPORTING INFORMATION TO RECOMMENDATION RATIONALES

For expanded and continually updated information please go to www.elderabusemi.org

1-1 SOCIAL MARKETING/PUBLIC AWARENESS CAMPAIGN

See www.safestate.org for a description of California's model campaign.

1-3 CENTRAL TOLL-FREE NUMBER

The federally mandated, one-stop referral system called 2-1-1 (functioning in over 40 states) is now in the process of statewide installation within Michigan. The Task Force is also recommending a detailed plan for a database and clearinghouse specifically dedicated to elder abuse in Michigan. The system of a one-stop elder abuse number should work in concert with the 2-1-1-system, and with the proposed database and clearinghouse system. A link to Michigan's 2-1-1 initiative can be found at www.elderabusemi.org

3-1 VOLUNTARY BANK PROJECTS

- a) See the BITS Fraud Protection Toolkit, Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation, February, 2006.
- b) See "Can Bank Tellers Tell? – Legal Issues Related to Banks Reporting Financial Abuse of the Elderly" by Sandra Hughes, National Center on Elder Abuse. This is a comprehensive look at the pros and cons of mandatory reporting. Link to this online at www.elderabusemi.org
- c) For a description of "secure accounts" go to www.azcentral.com/business/articles/o227Fraud-ON.html

- d) Oregon's financial reporting project can be accessed by calling Aileen Kay, (503) 945-6399.
- e) To review Missouri's banking project, go to: www.dhss.mo.gov
- f) Genesee County has a cooperative agreement with APS and several banks. Contact Dolores Coulter, coulterdm@sbcglobal.net.
- g) Go to www.elderabusecenter.org for a list of "Promising Practices."
- h) The Edcomm Group offers bank training at www.bankersacademy.com Call 1-503-945-6399 for a copy of the Oregon Bank Training Project.

3-2 VARIABLE ANNUITIES

- a) California treats variable annuities as insurance products but contains both disclosure and sales practices provisions.
- b) Vermont is the latest state to define variable annuities as securities.
- c) See California's education campaign about investment fraud, "Seniors Against Investment Fraud" found at www.corp.ca.gov
- d) See the Uniform Securities Act website at www.uniformsecuritiesact.org/usa/desktopdefault.aspx
- e) See California's website about annuities at www.annuitytruth.com
- f) See www.sec.gov/investor/pubs/varannty.htm for the Federal Government website about annuities.
- g) See the website of the National Association of Securities Dealers at www.nasd.org

AARP's Public Policy Agenda for 2006 endorses passage of the Uniform Securities Act: "States should enact the Uniform Securities Act, including the provision defining 'variable annuities' as a securities product."

3-11 UNIFORM POWER OF ATTORNEY ACT

Forty-seven states have adopted the Uniform Power of Attorney Act, with some deviations, according to the National Conference of Commissioners on Uniform State Laws. More information can be found at: www.nccusl.org/Update/uniformact_summaries/uniformacts-usfpoaa.asp

A 2002 American Bar Association Survey of Attorneys found the following results: 89 percent think the statute should set forth a standard of care for the agent; 64 percent of those surveyed encountered POA abuse by the agent; and 75 percent believed that remedies and sanctions, in addition to those currently provided, should be included in the statute. Since this survey, provisions of the Uniform Power of Attorney Act have been added or modified. Link to this online at www.elderabusemi.org

For more information on the survey see: www.abanet.org/rppt/cmtes/pt/h1/DPA-SurveyReport.pdf

3-14 APPRAISAL FRAUD

A study conducted in late 2003 by the October Research Corporation surveyed 500 fee appraisers from across the country, all with at least five years of experience in the residential real estate appraisal business. Seventy-five percent of those surveyed said they felt pressured by a mortgage brokers to "hit" a certain value; 59 percent said they have felt pressure from a loan officer to inflate the values of properties, with 25 percent responding that this happens nearly half the time. Because appraisers' prime source of business is through referrals from lenders and brokers,

the concern is that the appraisers are subject to direct or veiled threats to withhold future business, or to withhold payment for appraisals that do not support the submitted loan amount. Link to this online at www.elderabusemi.org

See "A House of Cards: Refinancing the American Dream," by Javier Silva of the advocacy group DEMOS; January, 2005 briefing paper, online at www.elderabusemi.org.

See West Virginia's website for their appraisal code: www.legis.state.wv.us/vwcode/30/masterfrm2frm.html or see West Virginia housing code 30-38-12(9) and 30-38-11.

The Michigan AARP office commissioned a study of appraisal fraud in 2005. The findings underscore the need for expanded sanctions. The report also references the DEMOS study that originally proposed the fee panel system. See it online at www.elderabusemi.org

4-1 NURSING HOME AND HOSPITAL EMPLOYEE REPORTING REQUIREMENTS

See "Clarification of Abuse Reporting Requirements for Direct Care and Related Staff" by Alison Hirschel, October 10, 2005, online at www.elderabusemi.org

4-2 MANDATORY REPORTING BY FINANCIAL PROFESSIONALS AND INSTITUTIONS

See the BITS Fraud Protection Toolkit, "Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation," February, 2006, online at www.elderabusemi.org

See "Can Bank Tellers Tell? – Legal Issues related to Banks Reporting Financial Abuse of the Elderly" by Sandra Hughes, National Center on Elder Abuse. This is a comprehensive treatment of the pros and cons of mandatory reporting. Link to this online at www.elderabusemi.org

A related recommendation in this report contains a listing of training programs to alert tellers to the signs of suspicious financial activity.

The full text of the California legislation is found at www.assembly.ca.gov/acs/acsframeset2text.htm

5-2 ADULT PROTECTIVE SERVICES

“Domestic Elder Abuse and the Law,” American Journal of Public Health, December 2003, Vol. 93, No. 12, p. 2135.

“Problems Facing State Adult Protective Services Programs and the Resources Needed to Resolve Them” Survey Report, National Adult Protective Services Association, 2003, online at www.elderabusemi.org