

1 EXECUTIVE COMMITTEE MEETING ON A SUBSTITUTE TO S.333, A
2 BILL TO PROMOTE ELDER JUSTICE; AND NOMINATION OF JOEY
3 RUSSELL GEORGE, TO BE TREASURY INSPECTOR GENERAL FOR TAX
4 ADMINISTRATION, U.S. DEPARTMENT OF TREASURY
5 WEDNESDAY, SEPTEMBER 15, 2004
6 U.S. Senate,
7 Committee on Finance,
8 Washington, DC.

9 The meeting was convened, pursuant to notice, at
10 10:00 a.m., in room SD-215, Dirksen Senate Office
11 building, Hon. Charles E. Grassley (chairman of the
12 committee) presiding.

13 Also present: Senators Hatch, Nickles, Snowe,
14 Bunning, Baucus, Breaux, and Graham.

15 Also present: Kolan Davis, Republican Staff Director
16 and Chief Counsel; Chad Groover, Judiciary Committee
17 Counsel; David Schwartz, Fellow, Finance Committee;
18 Lauren Fuller, Chief Investigator, Senate Committee on
19 Aging; Ted Totman, Deputy Staff Director; and Carla
20 Martin, Chief Clerk.

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Chief Clerk
~~is~~ revised

1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, CHAIRMAN,
2 COMMITTEE ON FINANCE

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4 The Chairman. Today we will consider a substitute
5 of the Elder Justice Act of 2004, a bill originally
6 introduced by Senator Breaux in the year 2003.

7 This bill is the product of an intense effort by
8 Senator Breaux, and obviously we all need to commend him,
9 and I do commend him, for his commitment to this issue
10 and for his tenacity in seeking a mark-up.

11 I am further modifying the substitute that I am
12 presenting to the committee this morning to accommodate
13 the addition of two amendments offered by Senator Graham
14 of Florida. Senator Graham's staff has worked overnight
15 with my staff, Senator Baucus' staff, and Senator
16 Breaux's staff, and we have reached an agreement for
17 including these amendments as the modification.

18 Accordingly, I move the Chairman's mark. Without
19 objection, it will be agreed to.

20 Also, today we have before us the nomination of Joey
21 Russell George, to be Treasury Inspector General for the
22 Tax Administration in the U.S. Department of the
23 Treasury.

24 I would like to be able to call for a vote on Mr.
25 George's nomination as soon as a quorum is present. I

1 cannot help but say, parenthetically, that with the
2 Senate not having votes today, we may have difficulty
3 getting a quorum, even on a bill as important as Senator
4 Breaux's.

5 We are going to move forward, though, and hopefully get
6 it done.

7 There is broad bipartisan support for the Elder
8 Justice Act because, as you can see, it has 43 co-
9 sponsors who have signed on in the Senate. Eleven of
10 those 43 members are members of this committee.

11 We have a coalition of 350 individuals and
12 organizations collaborating to develop the original
13 legislation. Of course, Senator Breaux is going to have
14 a chance to discuss his legislation, but before that I
15 would make just a few comments.

16 The Elder Justice Act is designed to address the
17 abuse towards elders. Many experts have concluded that
18 this problem is widespread and insufficiently addressed
19 under present public policy. If the legislation is
20 enacted, the activities authorized by it would do several
21 things.

22 I think I will put the rest of my statement in the
23 record, because it describes the bill. I should give
24 Senator Breaux the opportunity to describe a bill that he
25 has been much more involved in.

1 So at this point I will put my statement in the
2 record and call on Senator Breaux.

3 [The prepared statement of Senator Grassley appears
4 in the appendix.]

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1 OPENING STATEMENT OF HON. JOHN BREAUX, A U.S. SENATOR
2 FROM LOUISIANA

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4 Senator Breaux. Thank you very much, Mr. Chairman.
5 Thank you and your staff for working for such a long
6 period of time with me and my staff. As you have said,
7 really, 43 other members of the Senate have signed on as
8 co-sponsors.

9 A majority of the members of the Senate Finance
10 Committee have also signed on to this legislation.
11 Senator Hatch, I think, is the leading, first Republican
12 sponsor of the legislation, so it enjoys very bipartisan
13 support.

14 Then the full Senate, I can say that we probably
15 negotiated this legislation as much as they negotiated
16 the Treaty of Versailles, in the sense that we have met
17 with other committees, we have listened to other
18 committees, we have talked with their staffs, we have
19 tried to change the legislation several times in ways
20 that clearly establish the jurisdiction within this
21 committee as being appropriate and proper with the
22 measure that we have before us today.

23 Other committees, notably the Health, Education and
24 Welfare Committee, has some jurisdiction in this whole
25 area, and we have worked very closely with them to ensure

1 that we were not trying to take jurisdiction away from
2 them, but at the same time will legitimately protect in
3 the jurisdiction of the Senate Finance Committee, which
4 has a long history in regard to health care, and
5 particularly the health of seniors in this country.

6 The fact is, we in America have for too long not
7 given proper attention to the question of elder abuse in
8 this country. We have been having hearings on this
9 matter for over 25 years, and yet we have never been able
10 to produce a document which provides, I think, a set-up
11 within our Federal Government to provide the proper
12 attention to elder abuse.

13 We had many members of Congress who have spent a
14 great deal of time and effort working in this area
15 educating the general public, but it seems that Congress
16 was never able to come together in a fashion that
17 produced legislation.

18 This is the opportunity to do that. If you look back
19 at other areas that we have addressed as a Nation with
20 regard to abuse, you see that we, in fact, have done a
21 good job in many other areas.

22 When you talk about abuse of children, for instance,
23 this country spends approximately \$6.7 billion a year on
24 the federal level looking at the question of children who
25 are abused, neglected, and mistreated, and that is

1 appropriate and that is proper.

2 With regard to crimes against women, which is
3 certainly something that needs to be addressed
4 continuously in the future, this government spends about
5 a half a billion dollars a year with federal efforts to
6 try and coordinate efforts to eliminate, prevent, and
7 reduce the abuse against women in this country.

8 But when it comes to the question of elder abuse,
9 which is the fastest growing segment of our country's
10 population, where more and more people are expected to
11 live longer and longer, we have not really been able to
12 find a single person anywhere in the entire Federal
13 Government whose job and focus is to focus on the
14 question on the elder abuse.

15 I just do not think that is appropriate and proper,
16 and I think 43 other members of the Senate feel like
17 that, to the extent that they have sponsored the
18 legislation, and I am sure that others feel the same who
19 have not yet sponsored the legislation.

20 So we bring to the committee today, and I appreciate
21 the Chairman and Ranking Member Senator Baucus for their
22 cooperation and their help in this area. They have been
23 real leaders to bring this bill to say, now is, in fact,
24 the time to do something on the question of elder abuse.

25 I am pleased that Senator Graham has worked with us,

1 and the Chairman has agreed to accept two of his
2 amendments that were germane to this bill that are now
3 incorporated in the Chairman's mark, and I support them
4 as well.

5 The question of elder abuse is found in homes, it is
6 found in public institutions, it is found in domestic
7 settings with people who aren't even part of the
8 elder/senior's family.

9 The problem is, we do not have a good coordinating
10 mechanism to track these cases of abuse to provide
11 assistance and help to law enforcement agencies, in fact,
12 to get them involved in this area and this legislation
13 will go a long ways to accomplishing that coordination on
14 a federal level, which I think is so important.

15 So we provide resources, we provide assistance that
16 is needed and necessary, it improves prevention and
17 intervention by funding projects to make older Americans
18 feel safer, and indeed be safer, in their homes and in
19 their neighborhoods. It develops forensic centers and
20 experts to enhance the detection of the problem.

21 We found, in hearings in the Aging Committee,
22 hearings in this committee, Mr. Chairman, that you have
23 chaired, that the problem of detecting elder abuse is a
24 huge problem in and of itself because people do not want
25 to talk about it. They are ashamed of it. They are

1 embarrassed.

2 Seniors, in particular, do not want to admit that
3 their own children sometimes would do terrible things to
4 them. But that happens, and there have not been adequate
5 means and methods of detecting it, reporting it,
6 cataloguing it, and addressing it on the federal level.

7 This legislation establishes the principles that we
8 are not going to any longer neglect the question of elder
9 neglect, and we are going to do what is needed and
10 necessary on the federal level. This legislation moves
11 in that direction, and I am very pleased to submit it to
12 the committee.

13 I understand, Mr. Chairman, that with the no votes we
14 have today, that it would be your intention to perhaps
15 have a mark-up at a time off the floor, whenever we can
16 get a quorum. I appreciate that very much and would
17 certainly recommend adoption of this legislation at the
18 appropriate time.

19 The Chairman. I will call on Senator Baucus and
20 then Senator Graham, if he wants to give a statement.
21 Even though I have included your amendment, you may want
22 to report to us on it.

23 Anyway, I have not discussed this with Senator
24 Baucus, but I think, if it would work out, we would do it
25 Monday during the roll call votes that we would have

1 Monday, if the rules permit that.

2 Senator Baucus?

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA

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4 Senator Baucus. Thank you, Mr. Chairman.

5 First of all, I want to thank you. I also thank
6 Senator Breaux and Senator Graham, who have been working
7 to help get this legislation where it is.

8 It was not too long ago--I think it was June of 2002,
9 in those wonderful, halcyon days when I was chairman of
10 this committee--[Laughter]--I convened a hearing on this
11 subject.

12 The Chairman. I like wonderful days, but not that
13 wonderful. [Laughter].

14 Senator Baucus. Senator Breaux kind of at least
15 introduced the subject to me, and I was really quite
16 stunned at the degree to which our elderly are getting
17 abused and mistreated in various parts of our country.

18 I very much appreciate and applaud Senator Breaux for
19 follow pursuing this legislation. I think it is very
20 important, for the reasons that everyone here has already
21 mentioned, especially Senator Breaux.

22 It is high time we do have some Federal Government
23 leadership and some resources to assist in the fight
24 against elderly mistreatment. I also think the
25 provisions in this bill--that is, the strategies for

1 preventing that mistreatment--are quite good. I hope we
2 can get this passed, not only out of the committee here,
3 but passed, as has been suggested, on Monday when we have
4 the mark-up.

5 We have time here, Mr. Chairman. I know we do not
6 have much, but we are also, in addition to the mark-up,
7 considering the nomination of Russell George to be
8 Treasury Inspector General for Tax Administration.

9 Just a couple of words. This is obviously a very
10 important position. The IG's office has more than 900
11 employees. That is a lot of people. It oversees the
12 revenue collection responsibilities of the Federal
13 Government.

14 We have problems with our voluntary compliance
15 system. As we all know, there is a \$311 billion annual
16 tax gap, sophisticated shelter promotions are
17 proliferating, and in some cases even federal agencies
18 are enabling tax avoidance.

19 So the next Inspector General for Tax Administration
20 will need to butt heads with some pretty powerful figures
21 to get the tax administration arm of the Federal
22 Government moving again.

23 The IRS has spent several years and billions of
24 dollars attempting to upgrade their antiquated
25 technology, and to no avail. Morale is low, following

1 the 1998 IRS restructuring, especially. Aggressive
2 pursuit of tax cheats is down. There is no coordinated
3 Treasury/IRS long-term strategy to fight the growing
4 problem of tax abuse and avoidance. That is, no goals,
5 no benchmarks.

6 I explained all this to Mr. George at his hearing,
7 and I also explained to him that I had concerns about his
8 nomination. My concern is that he will not be tough
9 enough or independent enough to do the job that needs to
10 be done, because it is an extraordinary challenge that
11 any next Inspector General will face.

12 When one party controls every branch of government,
13 it is critical that we have a very strong, independent
14 watchdog, especially in the OIG and the Inspector General
15 and Treasury, to protect against waste, fraud, and abuse.
16 We need Inspectors General who will call things as they
17 see them without regard to politics.

18 Now, Mr. George has promised me personally that he
19 will make it his mission to prove my concerns to be
20 unwarranted. I hope that is the case. I will vote for
21 Mr. George today, but in doing so I am taking him at his
22 word. Mr. George will be hearing from me if he does not
23 keep his promise, but I wish him great luck.

24 Mr. Chairman, thank you for all you are doing here.
25 I might say at this point, Mr. Chairman, there is a

1 member of this committee who has stood out as one of the
2 stellar members of this committee.

3 He is so creative and independent and bright in his
4 analysis of all the work that has come before our
5 committee, and we are going to miss him very much. He is
6 retiring at the end of this year. Of course, I am
7 talking about the chief sponsor of the legislation that
8 we are now considering.

9 So in his honor, Mr. Chairman, I ask consent that the
10 Elder Justice bill be renamed, and it be named the John
11 Breaux Elder Justice Act.

12 The Chairman. I would join you in a Baucus-Grassley
13 amendment to do that, if you would let me add my name to
14 that amendment.

15 Senator Baucus. Absolutely, Mr. Chairman.

16 The Chairman. Without objection.

17 Senator Breaux. I would not object. [Laughter].

18 Senator Baucus. If I might say, we are going to
19 miss Senator Graham. We have got to find another bill,
20 Senator, so we can name the next one after you.

21 Senator Breaux. Mr. Chairman, if I might, that is
22 very generous and it is quite a surprise. I certainly
23 did not expect it. When you think about this legislation
24 and the fact that it has been about 25 years, there are
25 about 315 members out there in the public that have

1 worked extremely hard on moving this legislation. People
2 have worked on this for 25 years.

3 We all remember Claude Pepper. If it would not have
4 been for Claude Pepper, issues of elder abuse and neglect
5 would probably never have gotten the attention that it
6 has received over the years and the concern that people
7 have.

8 Go back to the days of Claude Pepper. There has been
9 a whole series of members who have been most active in
10 this area, and this legislation is really for all of
11 them. They all had their fingers, input, and wisdom that
12 gets us to this day. I am optimistic that we can get it
13 passed in the Senate.

14 I think that the House is sort of waiting for us to
15 move it over here. They have got some real leaders over
16 there. Congressman Roy Blunt on the Republican side, and
17 Romney Manuel on the Democratic side, have joined over
18 there. I think they are sort of waiting for us to send
19 this to them. It really belongs to everybody, and I
20 thank you very much for your courtesies.

21 The Chairman. Thank you.

22 Now, Senator Graham. Before Senator Graham speaks, I
23 would like to have members think of terms of our staffs
24 having worked on this for so long, that maybe we could
25 avoid a walk-through. But unless there is unanimous

1 consent to do that, we will have the walk-through.

2 Senator Graham?

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1 OPENING STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM
2 FLORIDA

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4 Senator Graham. Thank you very much, Mr. Chairman.
5 I appreciate the wonderful cooperation of yourself,
6 Senator Baucus, Senator Breaux in providing these
7 amendments to be included. I will just summarize them,
8 briefly.

9 The first, is one that Senator Snowe knows well,
10 because we jointly filed a bill on the issue of
11 medication errors. There are almost 100,000 Americans
12 who are killed each year, who die each year, while they
13 are in some form of medical service, including nursing
14 homes.

15 In the last Medicare revision that we did, we
16 included the language that Senator Snowe and I had
17 included in a freestanding bill as it relates to
18 providing grants to physicians to assist them in
19 exploring ways to reduce death and untoward events in a
20 health care setting.

21 This takes that same language and uses an existing
22 grant program to provide similar incentives to nursing
23 homes to become more aggressively involved in the
24 reduction of medical errors.

25 The second amendment relates to the electronic

1 submission of data. This has been an issue that this
2 committee has been interested in a number of ways.
3 Senator Baucus was just talking about the IRS.

4 We, a few years ago, considerably accelerated its use
5 of electronic submission of data. This will do the same
6 thing for nursing homes as they communicate back and
7 forth with the appropriate federal agencies.

8 So, Mr. Chairman, again, I thank you and our other
9 colleagues for their willingness to include these two
10 amendments. I think they will make a constructive
11 addition to an already excellent bill, a bill which has
12 been further perfected by naming it for a great colleague
13 and American, John Breaux.

14 The Chairman. And I thank you, Senator Graham, too,
15 because I know that you had a lot of interest in this
16 bill. I thank you for cooperating so we can move it
17 along.

18 Senator Snowe, you were really here before Senator
19 Hatch. Did you have anything you wanted to say? I would
20 call on you, first, then Senator Hatch.

21 Senator Snowe. Well, I just want to join Senator
22 Graham in support of this legislation, but also the
23 amendments that he has offered. I think it certainly
24 goes a long ways towards reducing medical errors, and it
25 is a very creative and innovative approach. It is one

1 that he has championed for so long, as well as he has for
2 the seniors in this country, not only on behalf of his
3 constituents in Florida, but throughout the country.

4 Whenever Claude Pepper is mentioned you just
5 immediately think of his work for seniors, and Gob Graham
6 is certainly equivalent in the kind of support he has
7 given to seniors in his State and around the country.

8 Now, after decades of discussion, we are finally
9 moving to address the problem of elder abuse. It is so
10 fitting that we recognize the tremendous dedication
11 Senator Breaux has shown to this problem, by naming this
12 legislation to honor him.

13 The Chairman. Senator Hatch?

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4 OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR
5 FROM UTAH

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7 Senator Hatch. Well, thank you, Mr. Chairman.
8 Senator Graham certainly reminds me a lot of Claude
9 Pepper. He has got a great sense of humor and does a job
10 around here.

11 Senator Baucus. You mean Senator Pepper.

12 Senator Hatch. Senator Pepper, himself. Senator
13 Graham-Pepper.

14 Senator Baucus. Yes. [Laughter].

15 Senator Hatch. Well, I want to thank Senator
16 Grassley for holding this important mark-up. I also want
17 to commend my colleague, Senator Breaux, on his strong
18 leadership regarding this issue, and I am very proud to
19 be the Republican chief sponsor of this on this important
20 bill.

21 As chairman of the Senate Judiciary Committee, I
22 strongly support Chairman Grassley's efforts to mark up
23 this legislation today, and I greatly appreciate your
24 willingness, you and Senator Baucus, to work with Senator
25 Breaux and others on this committee, and me through the

1 Finance Committee.

2 I am also a member of the Special Committee on Aging,
3 and I have a longstanding interest in making sure that
4 the tools exist to protect our Nation's current and
5 future senior citizens from crime.

6 As you know, the elderly population is growing at a
7 greater rate than in any other segment. Seniors have
8 increasingly experienced abuse, neglect, and
9 exploitation.

10 Therefore, I believe that the Congress must provide
11 leadership in protecting against elder abuse and, if
12 discovered, prosecuting those who abuse the elderly.
13 Our right to live free from abuse and neglect does not,
14 and should not, diminish with age.

15 Now, since it has a particularly devastating impact,
16 elder abuse increases mortality. Because of their
17 advanced age, troubled health, or limited resources,
18 senior citizens typically have fewer options for
19 resolving or avoiding abusive situations.

20 Additionally, the elderly are more likely to be
21 harmed by physical abuse because of the existing physical
22 limitations that they suffer. Older Americans are also
23 limited in their ability to recover from financial
24 exploitation if they have already retired, have limited
25 resources, or a short remaining life span.

1 Across the country, State legislatures have enacted
2 legislation addressing domestic or institutional elder
3 abuse. State legislatures have developed various
4 reporting systems to identify elder abuse cases, and in
5 addition have created Adult Protective Services systems
6 to investigate alleged incidents and respond to the needs
7 of victims.

8 Now, these statutes vary widely in the age at which a
9 victim is covered, the definition of elder abuse,
10 classification as criminal or civil types of abuse
11 covered, reporting requirements, mandatory or voluntary,
12 investigation procedures, and remedies for abuse.

13 More than 500,000 older persons are abused or
14 neglected in domestic settings each year. Estimates
15 conclude that for every reported incidence of abuse,
16 nearly five go unreported.

17 The National Elder Abuse Incidence Study estimates
18 that, of the reported elder incidences, 30 percent
19 involved financial or material exploitation, 25 percent
20 involved physical abuse, and, absolutely unacceptably,
21 there are those senior citizens who are victims of sexual
22 abuse and sexual assault.

23 Now, I am pleased that our committee is considering
24 this legislation today because I believe that action
25 needs to be taken in order to protect our elderly in our

1 society. This legislation is necessary because it is
2 taking an important first step toward protecting senior
3 citizens from being abused and punishing those
4 individuals who engage in abusive activities with regard
5 to senior citizens.

6 So, again, I want to recognize Senator Breaux's hard
7 work on this issue and his longstanding commitment to
8 getting the Elder Justice Act signed into law.

9 Due to your efforts, Senator Breaux, I believe senior
10 citizens are more likely to live happier and safe lives,
11 and I want to thank everybody on this committee for
12 working on this.

13 The Chairman. Yes. Let the record also note that
14 we have had seven members present during this discussion
15 for the sake of meeting the rules requirement about the
16 laying down of the amendment and the substitute in regard
17 to Senator Baucus's amendment on the naming of the bill.

18 Also, just in case this might be the last mark-up we
19 have this year--you never really know, but just in case
20 it is--I want us all to be cognizant of the fact that,
21 for Senator Breaux, Senator Nickles, and Senator Graham
22 of Florida, this could be their last mark-up involvement.

23 We want to express our appreciation, not only for how
24 well they have represented their constituents, but their
25 contribution to the work of this committee. I want to

1 say thank you to all of you, and in each case I have
2 considered each of you to be supportive of the Chairman,
3 even though we might not have agreed on everything.

4 But I do not think that this committee could function
5 any better than it has during the time of their
6 membership, and I am sure that Senator Baucus would say
7 the same thing for the period of time that he was
8 chairman of the committee as well.

9 So, I want to thank all of you for your contribution
10 to the process of public policy as a member of the Senate
11 Finance Committee. Thank you all.

12 Senator Snowe. Mr. Chairman?

13 Senator Baucus. Mr. Chairman?

14 The Chairman. Senator Baucus?

15 Senator Baucus. Mr. Chairman, I suspect this is not
16 our last gathering. I think we will appropriately
17 address that subject at that time when we do have our
18 last gathering. But in the meantime, in the event this
19 is our last gathering, obviously, I cannot think of three
20 better Senators. And that maybe has something to do with
21 why they are all retiring. [Laughter].

22 But they are wonderful. They are first-rate. I
23 cannot think of three better people who are more
24 dedicated to public service and doing the public good
25 than Senator Nickles, Senator Graham, and Senator Breaux.

1 They may have a different point of view sometimes, but
2 clearly they are going to be very much missed.

3 The Chairman. Senator Snowe?

4 Senator Snowe. Well, I hope we do have that
5 opportunity, Mr. Chairman, to recognize the contributions
6 that have been made by these Senators. Senator Breaux,
7 with whom I have worked with for so long, it is almost
8 hard to contemplate the fact that he will not be here.

9 We began our service in the House of Representatives
10 together on building consensus, so it is almost hard to
11 imagine his presence not being part of this committee,
12 and his contributions. So, I hope we have the
13 opportunity to honor these individuals.

14 And Senator Nickles, with whom I have had the
15 pleasure of serving with on this committee as well, and
16 in the Republican conference. We are going to miss the
17 work of these individuals on this committee. Thank you.

18 The Chairman. I asked previously if it would be all
19 right if we would avoid the walk-through. Is there any
20 objection to not having a walk-through?

21 Senator Bunning. Mr. Chairman, may make a comment
22 about our parting members, if I could?

23 The Chairman. You can. But could I get an answer
24 to my question?

25 Senator Bunning. All right.

1 The Chairman. Is there any objection?

2 Senator Baucus. No objections.

3 The Chairman. All right.

4 Before you speak, I wanted to announce that, if we
5 did have a walk-through, Mrs. Fuller was going to do it
6 because she, and I think appropriately so, has worked so
7 hard as a member of Senator Breaux's staff, and I thought
8 it was appropriate for her to handle the walk-through, as
9 well as the questions that might be asked.

10 Let me see. The Senator from Kentucky.

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4 OPENING STATEMENT OF HON. JIM BUNNING, A U.S. SENATOR
5 FROM KENTUCKY

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7 Senator Bunning. Thank you, Mr. Chairman.

8 I, too, would like to join in thanking the two
9 members that are leaving our committee.

10 Senator Baucus. Three.

11 The Chairman. Three.

12 Senator Bunning. Three. Excuse me. I forgot one.
13 Obviously, they are not here.

14 But specifically John Breaux and Max Baucus,
15 particularly on the Medicare prescription drug bill, when
16 you stuck when it was not easy.

17 Senator Nickles. Yes.

18 Senator Bunning. It was very difficult. I know how
19 hard that was because I know how hard it was on this
20 side. Without your assistance, we would not have got
21 that bill done. I think it is in the best interests of
22 our Medicare recipients that we were able to get that
23 bill done, and all the service you have done for the
24 Congress, both in the House and in the U.S. Senate.

25 And my good friend, who I have never defeated on the

1 golf course, Don Nickles. I think he takes great
2 pleasure in making sure that new members that come to the
3 Senate never defeat him, and he has made sure that I have
4 never. But in serving on the Budget Committee with him,
5 and his chair, and knowing him as our Majority Whip and
6 Minority Whip, and just generally speaking, the counsel
7 that you have given me since I have been here, I thank
8 you very much.

9 Senator Nickles. Thank you.

10 The Chairman. Could I ask a question so we know
11 whether to proceed or not? We have had, now, eight
12 members here, so we are probably right now four short of
13 a quorum. Would staff stand if they expect their members
14 to come so I can make a determination if we are ever
15 going to get a quorum? One person stood. That means we
16 will not have a quorum.

17 So then I am going to recess this meeting until
18 whatever time we have a vote on Monday, and then we will
19 do it off the Senate floor.

20 Meeting recessed.

21 [Whereupon, at 10:31 a.m. the meeting was recessed,
22 to reconvene on 5:30 p.m. on Monday, September 20, 2004.]

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PAGE

STATEMENT OF :

THE HONORABLE CHARLES E. GRASSLEY A United States Senator from the State of Iowa	2
THE HONORABLE JOHN BREAUX A United States Senator from the State of Louisiana	5
THE HONORABLE MAX BAUCUS A United States Senator from the State of Montana	11
THE HONORABLE BOB GRAHAM A United States Senator from the State of Florida	17
THE HONORABLE ORRIN G. HATCH A United States Senator from the State of Utah	20
THE HONORABLE JIM BUNNING A United States Senator from the State of Kentucky	27

Wilmington
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**UNITED STATES SENATE
COMMITTEE ON FINANCE**

Charles E. Grassley, Chairman

**Wednesday, September 15, 2004
10:00 a.m.**

215 Dirksen Senate Office Building

Agenda for Business Meeting

- I. A Substitute to S. 333, a bill to promote elder justice; and,**
- II. Nomination of Joey Russell George, to be Treasury Inspector General for Tax Administration, U.S. Department of Treasury.**



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

<http://finance.senate.gov>

Statement of Sen. Chuck Grassley, Chairman
Committee on Finance Consideration of the Elder Justice Act of 2004, Treasury Inspector
General for Tax Administration
Wednesday, Sept. 15, 2004

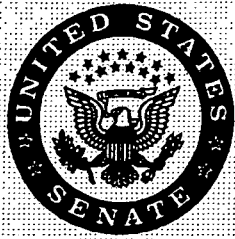
Today, at Senator Breaux's request, we will consider a modification of the Elder Justice Act of 2004, a bill originally introduced by Senator Breaux in 2003. This bill is the product of an intense effort by Senator Breaux, and I commend him for his commitment to this issue and for his tenacity in seeking this mark-up.

Also today, we have before us the nomination of Joey Russell George to be the Treasury Inspector General for Tax Administration in the U.S. Department of the Treasury. I would like to be able to call for a vote on Mr. George's nomination as soon as a quorum is present.

There is broad bipartisan support for the Elder Justice Act as shown by the 43 cosponsors who have signed on in the Senate, eleven of whom are members of this committee. A coalition of 350 individuals and organizations collaborated to develop the original legislation. Of course, I do want to give Senator Breaux a chance to discuss his legislation. But before I do I have a few comments of my own.

The Elder Justice Act is designed to address the problem of elder abuse. Many experts have concluded that this problem is widespread and insufficiently addressed as a matter of public policy. If the legislation is enacted, the activities authorized by it would do several things. They would generate more much needed knowledge about the extent and scope of the problem of elder abuse. They would enable new approaches to helping abused older people to be tried and lead to them being more widely adopted. They would contribute to the development in the law enforcement community of greater understanding of, and expertise on, elder abuse.

In addition to assisting state and local law enforcement, the bill dedicates substantial resources to the federal effort to reduce elder abuse. The bill would allow the Department of Justice to hire additional prosecutors and nurse investigators. It would also create a grant program to create mobile and stationary forensic centers to develop expertise in investigating crimes against the elderly. The bill would improve the quality of long term care services by helping nursing facilities improve management practices, recruit direct care workers, retain them, better train them and develop richer career ladders for them. The bill also would require reporting crimes in nursing facilities to local law enforcement and to the secretary. Currently, there is no federal requirement, as I understand it, to report crimes committed against residents of long term care facilities. I believe the bill deserves the committee's support.



Committee On Finance

Max Baucus, Ranking Member

NEWS RELEASE

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For Immediate Release

Wednesday, September 15, 2004

Contact: Russ Sullivan
202-224-4515

**Statement of U.S. Senator Max Baucus
Finance Committee Markup of the Chairman's Revision to the
Elder Justice Bill, S. 333 and the Nomination of Joey Russell George for Treasury
Inspector General for Tax Administration**

"Thank you, Mr. Chairman, for holding this markup. And thank you, Senator Breaux, for your leadership and advocacy on the issue of elder justice. I am glad to see this legislation, the Elder Justice Act, come before the Finance Committee. In June 2002, when I was Chairman, I convened a hearing on this important topic. Elder mistreatment is a tragic problem. Like child abuse and domestic violence, it requires a coordinated response from public health, social services, and law enforcement.

Elder abuse, neglect, and exploitation cause great suffering among our senior citizens. Elder mistreatment pulls at the hearts of all of us who understand the vulnerability that may come with advancing age. It is time that we do something about it. The Elder Justice Act will improve our ability to identify, prevent, and intervene in elder mistreatment. Doing so becomes more and more critical as our society ages. The Chairman's mark will establish federal leadership and resources to assist in the fight against elder mistreatment. It will implement strategies for preventing that mistreatment. And it will increase security, collaboration, and consumer information in long-term care.

In addition to the markup on Elder Justice, we are also here to vote on a nominee today. The administration has nominated Russell George to be the Treasury Inspector General for Tax Administration. This is an extremely important position. This Inspector General's office has more than 900 employees and oversees the revenue collection responsibilities of the federal government.

Our voluntary tax system faces enormous and unprecedented problems:

- There is a \$311 billion annual tax gap.
- Sophisticated shelter promoters proliferate.
- In some cases, even Federal agencies are enabling tax avoidance.

The next Inspector General for Tax Administration will need to butt heads with powerful figures to get the tax administration arm of the federal government moving again. The IRS has spent several years, and billions of dollars attempting to upgrade their antiquated technology – to no avail. Morale is low, following the 1998 IRS restructuring. Aggressive pursuit of tax cheats is down. And there is no coordinated Treasury-IRS long-term strategy to fight the growing problem of tax abuse and avoidance. No goals, no benchmarks.

I explained to Mr. George at his hearing that I had concerns about his nomination. I am concerned that he will not be tough or independent enough to do the job that needs to be done. When one party controls every branch of government, it is critical that we have strong, independent watchdogs in agencies to protect against waste, fraud, and abuse. We need inspectors general who will call things as they see them, without regard to politics.

Mr. George has promised me personally that he will make it his mission to prove my concerns to be unwarranted. I hope that is the case. I will vote for Mr. George today, but in doing so, I will take him at his word. Mr. George will be hearing from me if he does not keep his promise. I wish him luck.

Before observers conclude that this markup is the last train leaving the Finance Committee, I want to note that I and many of my Colleagues also look forward to resolving some of the Committee's other outstanding issues, such as QI-1s and CHIP redistribution. The Chairman and I are talking about how best to handle those issues. And I look forward to resolving them in the coming days.

Thank you, Mr. Chairman, for holding this markup. Thank you to my Finance Committee colleagues for allowing this markup to go forward. I recognize that this is no easy feat as we approach the end of the session in an election year. And congratulations, Senator Breaux, for helping to bring us to this day.”

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Elder Justice Act of 2004
Committee on Finance
Statement of Senator John Breaux

September 15, 2004

Thank you, Chairman Grassley. First, I would like to take a moment to thank the Chairman, Senator Baucus, Senator Hatch and all of the co-sponsors of the Elder Justice bill who sit on this Committee: Senators Bingaman, Bunning, Jeffords, Lincoln, Rockefeller, Santorum, Smith and Snowe. Each of you has been instrumental in helping move this bill forward and I appreciate all of the time and effort you have contributed.

Despite the rapid aging of America, few pressing social issues have been as systematically ignored as elder abuse, neglect and exploitation. Before we open up the discussion to the specifics of the bill, let me just make a few points:

- **25 years of congressional hearings** on the devastating effects of elder abuse, called elder abuse a “disgrace” and a “burgeoning national scandal.”
- To date, we have **no federal law enacted** to address elder abuse in a comprehensive manner.
- On the contrary, Congress passed comprehensive bills to address the ugly truth about **child abuse and crimes against women**, yet there is not one full-time federal employee working on elder abuse in the entire federal government.
- **A crime is a crime.** Crimes against seniors must be addressed the same way child abuse and crimes against women are.
- The **cost of elder abuse is high** by any measure, including needless human suffering, inflated healthcare costs, depleted public resource, and loss of one of our greatest national assets - the wisdom and experience of our elders.
- Abuse of our seniors takes many forms. It can be physical, sexual, psychological or financial. **Elder abuse can happen anywhere and at the hands of anyone.** It knows no demographic or geographic boundaries.
- **Studies conclude that elder abuse, neglect and exploitation are widely under reported and these abuses significantly shorten the lives of older victims.** A single episode of mistreatment can “tip-over” an otherwise independent, productive life, triggering a downward spiral that can result in depression, serious illness and even death.
- The time has come for Congress to provide seniors a set of fundamental protections. The bill will elevate the issues of elder abuse, neglect and exploitation to the national stage in a lasting way. We want to ensure federal leadership to states and to provide resources for

services, prevention and enforcement efforts to those on the front lines.

- **The Elder Justice Act takes numerous steps to prevent and treat elder abuse:**
 - It improves prevention and intervention by funding projects to make older Americans safer in their homes, facilities and neighborhoods.
 - It develops forensic centers and expertise to enhance detection of the problem.
 - It improves collaboration by requiring coordination among federal, state, local and private entities, law enforcement, long-term care facilities, consumer advocates and families.
 - It aids law enforcement and prosecutors in holding those responsible for elder abuse accountable for their actions.
 - I always say the good news is “we’re living longer” and the bad news is “we’re living longer”. With this special gift of increased life comes the awesome responsibility to prevent the needless abuse and suffering borne by our frailest citizens.

I appreciate the work of my fellow members and the wide array of groups involved in this effort to protect one of our nation’s greatest resources- our elderly. I look forward to continued support from both sides of the aisle and in both houses to make elder justice a reality for those Americans who need it most. I believe passage of the Elder Justice Act is one of the most important things this Congress can do. Thank you and I look forward to addressing any questions you may have.

Mr. Chairman, before we proceed, I ask that a law review article entitled, “Confronting Elder Abuse, Neglect and Exploitation: The Need for Elder Justice Legislation” written by Senator Hatch and myself be entered, in its entirety, into today’s record as background on the development of the bill.

Modification to the Chairman's Mark

Amend Section 2211 of the Chairman's Mark to require the Secretary of Health and Human Services to develop a plan for adopting open standards for transactions and data elements for such transactions to enable improved electronic submission of clinical data by Long Term Care facilities and allowing electronic transmission of data using such standards. The optional electronic submission of data shall go into effect not later than 10 years from enactment.

Amend Section 2211 of the Chairman's Mark to allow grants to be used to improve quality and prevent neglect by improving patient safety and reducing adverse events and health care complications resulting from medication errors in long-term care settings.

Funds provided under grants may be used for any of the following:

- (A) For purchasing, leasing, and installing computer software and hardware, including handheld computer technologies.
- (B) Making upgrades and other improvements to existing computer software and hardware to enable e-prescribing.
- (C) Providing education and training to eligible physician staff on the use of technology to implement the electronic transmission of prescription and patient information.

Description of the Chairman's Mark to S. 333, the Elder Justice Act of 2004

Short Title; Table of Contents; Definitions (Section 1 of the bill)

Present Law

No provision.

Senate Bill

The bill sets forth the title of the Act as the Elder Justice Act of 2004, and outlines the table of contents. It also specifies that any term defined in new Title XXII of the Social Security Act has the meaning set forth by the bill.

Findings (Section 2 of the bill)

Present Law

No provision.

Senate Bill

The bill describes the following findings of Congress:

- the proportion of the population aged 60 and over will increase dramatically over the next 30 years as baby boomers approach retirement;
- each year between 500,000 and 5 million older persons are abused, neglected, or exploited;
- elder abuse, neglect and exploitation cross all racial, social class, gender and geographic lines;
- victims are subject not only to injury from mistreatment and neglect but they are 3.1 times more likely to die earlier than expected;
- despite a dearth of data on abuse, neglect and exploitation, experts agree that most cases are never reported and that abuse and neglect triggers a downward spiral in an elder's life. Programs that address domestic violence and child abuse have demonstrated the need for a multi-faceted law combining public health, social service and law enforcement approaches;
- Congress has been presented with facts and testimony for a coordinated federal approach to combat elder abuse, neglect and exploitation for over 20 years; the federal government has been slow to respond to victims' needs;
- no federal law to adequately and comprehensively address the issues of abuse, neglect and exploitation has been enacted and limited resources are available to address these issues;

- differences in state laws and practices lead to significant disparities in prevention, protective and social services, treatment systems and law enforcement and to other inequities;
- the federal government has played an important role in preventing child abuse and neglect, domestic violence, and violence against women, and should promote similar efforts in prevention of elder abuse, neglect, and exploitation;
- the federal government should provide leadership and assist states and communities in efforts to protect elders;
- the problem of elder abuse requires a comprehensive approach that, among other things, integrates health, legal, and social services agencies and organizations and emphasizes the need for prevention, reporting, investigation, assessment, treatment and prosecution;
- the human, social, and economic cost of abuse, neglect and exploitation is high;
- the failure to coordinate activities threatens the future and well-being of millions of elders; and
- all elements of society have a shared responsibility in responding to the national problem of elder abuse, neglect, and exploitation.

Purposes (Section 3 of the bill)

Present Law

No provision.

Senate Bill

The bill defines the purposes of the Elder Justice Act of 2004, as follows:

- to enhance the social security of the Nation by ensuring adequate public-private infrastructure and resolve to prevent, detect, treat, understand, intervene in, and where appropriate, aid in the prosecution of elder abuse, neglect, and exploitation;
- to bring a comprehensive approach to preventing and combating elder, abuse, neglect and exploitation;
- to raise the issue of elder abuse, neglect and exploitation to national attention, and to create the infrastructure at the federal, state and local levels to ensure that individuals and organizations have resources and information they need;
- to bring a comprehensive multidisciplinary approach to elder justice;
- to set in motion research and data collection to fill gaps in knowledge on the issue;
- to supplement activities of service providers and programs, to enhance training, and to leverage scarce resources efficiently to ensure that elder justice receives the attention it deserves as the nation's population ages;

- to examine the many laws and practices about elder justice in different states and jurisdictions to ascertain those that are most effective;
- to promote an effective adult fiduciary system including an adult guardianship system;
- to recognize and address the role of mental health, disability, dementia, substance abuse, medication mismanagement, and family dysfunction problems in increasing and exacerbating elder abuse, neglect and exploitation;
- to create a strategic plan for the development and coordination of research, programs, training, and other efforts nationwide;
- to promote collaborative efforts and diminish overlap and gaps in efforts;
- to honor and respect the right of all persons with diminished capacity to decisionmaking, autonomy, self-determination, and dignity of choice; and
- to respect the wishes of persons with diminished capacity and family members in providing support services and care plans intended to protect elders from abuse, neglect, exploitation, and self-neglect.

Title I – Department of Health and Human Services

Amendments to the Social Security Act – Elder Justice (Section 101(a) of the bill)

Present Law

No provision.

Senate Bill

Section 101(a) of the bill would amend the Social Security Act by adding a new Title XXII – *Elder Justice*.

Definitions (Section 2200 of the Social Security Act)

Definitions

Present Law

(a) Definitions related to some of the purposes of the new Title XXII are defined in other related statutes. Related statutes are as follows:

Present Law and Senate Bill: Definitions

Term	Present law	Senate bill
Abuse	<i>Section 102(13) of the Older Americans Act: "Abuse" of an older</i>	"Abuse" is defined as the knowing infliction of physical

Term	Present law	Senate bill
	<p>person is defined as the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish, or deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish or mental illness.</p>	<p>or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.</p>
Exploitation	<p><i>Section 102(24) of the Older Americans Act:</i> "Exploitation" of an older person is defined as the illegal or improper act or process of an individual including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.</p>	<p>"Exploitation" is defined as the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.</p>
Long-term care facility	<p><i>Section 102 (32) of the Older Americans Act:</i> "Long term care facility" is defined as a skilled nursing facility as defined in Section 1819(a) of the Social Security Act; any nursing facility as defined in Section 1919(a) of the Social Security Act; and for purposes of the Title III and Title VII provisions for elder abuse prevention, a board and care facility.</p>	<p>"Long-term care facility" is defined as a residential care provider that arranges for, or directly provides, long-term care.</p>
Neglect	<p><i>Section 102 (34) of the Older Americans Act:</i> "Neglect" is defined as the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide the goods or services.</p>	<p>"Neglect" is defined as the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintaining the health or safety of an elder, or self-neglect.</p>
Criminal sexual abuse	<p><i>Title XVII of the Violent Crime Control and Enforcement Act:</i> a "sexually violent offence" is defined as any criminal offense that consists of aggravated sexual abuse or sexual abuse (as defined by 18 U.S.C. Section 2241 and 2242 or as defined by state law) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse.</p>	<p>"Criminal sexual abuse" is defined as serious bodily injury that shall be considered to have occurred if the conduct causing the injury is conduct constituting aggravated sexual abuse under Section 2241, or sexual abuse under 18 U.S.C. or any similar offence under state law.</p>

(b) The Senate bill also defines the following terms: adult protective services, caregiver, direct care, elder, elder justice, eligible entity, fiduciary, grant, guardianship, Indian tribe, law enforcement, long-term care, nursing facility, secretary, self-neglect, serious bodily injury, criminal sexual abuse, social, state, state legal assistance developer, state long-term care ombudsman, and underserved population.

Subtitle A – Federal Elder Justice System

Elder Justice Coordinating Council (Section 2201 of the Social Security Act)

Present law

No provision.

Senate Bill

Section 2201 would establish an *Elder Justice Coordinating Council* in the Office of the Secretary of HHS.

Membership. The Council would be composed of the following members: the Secretary of HHS (or designee) and the Attorney General (or designee). These individuals will be co-chairs of the Council. Membership would also include the head of each federal department or agency having administrative responsibility for administering programs related to elder abuse, neglect or exploitation. Members must be officers or employees of the federal government.

Duties and Reports. The Council would be required to make recommendations to the Secretary of HHS and the Attorney General regarding coordination of federal, state and local activities related to prevention of elder abuse, neglect, and exploitation. The Council would be required to submit a report to Congress that describes its activities and challenges; and make recommendations for legislation, model laws and other actions deemed appropriate. The report is to be submitted to Congress within two years of enactment of the Elder Justice Act and every two years thereafter.

Meetings. The Council is to meet at least twice a year.

Other Requirements. The bill also sets forth requirements for powers of the Council, vacancies in membership, travel expenses, and detail of federal government employees to the Council.

Advisory Board on Elder Abuse, Neglect and Exploitation (Section 2202 of the Social Security Act)

Present Law

No provision.

Senate Bill

Section 2202 would establish the *Advisory Board on Elder Abuse, Neglect and Exploitation*.

Solicitation of Nominations, Membership, and Terms. The Secretary of HHS would be required to publish a notice in the *Federal Register* soliciting nominations for Advisory Board membership. The Board would be composed of 26 members appointed by the Secretary, and must have experience and expertise in prevention of elder abuse, neglect and exploitation. Each member would be appointed for a three year term, except for the first members of the Board whose terms would be staggered.

Duties and Reports. The Board would be required to create a short and long-term multidisciplinary plan for development of the field of elder justice.

Within 18 months of the bill's enactment and annually thereafter, the Advisory Board would be required to prepare and submit to the Elder Justice Coordinating Council and the appropriate committees of Congress, a report containing information on federal, state, and local public and private elder justice activities. The report is also to contain recommendations on programs, research, services, practice, enforcement and coordination among entities that carry out elder justice and other related activities; modifications needed in federal and state laws, research, training, and national data collection; and on a multidisciplinary strategic plan to guide the field of elder justice.

Other Requirements. The bill sets forth requirements relating to powers of the Board, vacancies, expired terms, election of officers, travel expenses, and detail of government employees to the Board.

Human Subject Research (Section 2203 of the Social Security Act)

Present Law

Definition of Legally Authorized Representative. Subpart A of Part 46 of Title 45, Code of Federal Regulations, known as the Common Rule, that governs most federally-funded human subjects research, currently defines the term "legally authorized representative" as "an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research."

Researcher Guidelines. No guidelines are currently in place to assist researchers who work in the areas of elder abuse, neglect, and exploitation, with issues relating to human subjects research.

Senate Bill

Section 2203 would define "legally authorized representative," for purposes of research under the proposed Title XXII, to mean, unless otherwise

provided by law, the individual, or judicial or other body authorized under the applicable law to consent to medical treatment on behalf of another person.”

It would also require the Secretary, acting through the Director of the National Institute on Aging (NIA), to promulgate guidelines to assist researchers working in the areas of elder abuse, neglect, and exploitation, with issues relating to human subjects research.

Regulations (Section 2204 of the Social Security Act)

Present Law

No provision.

Senate Bill

Section 2204 would authorize the Secretary of HHS to issue regulations that may be necessary to carry out new Title XXII.

Authorization of Appropriations (Section 2205 of the Social Security Act)

Present Law

No provision.

Senate Bill

To carry out the functions under Subtitle A (the Federal Elder Justice System), the bill authorizes \$3 million for FY2006, and \$3.5 million for each of FYs 2007-2009.

Subtitle B – Elder Justice Programs

Grants and Incentives to Enhance Long-Term Care Staffing (Section 2211 of the Social Security Act)

Present Law

No provision concerning federal agency coordination to encourage the employment of welfare recipients or recipients of Temporary Assistance to Needy Families (TANF) in long-term care facilities.

Nursing homes that receive federal funds are required to meet certain federal laws and standards to receive funding. These laws require nursing aides, who work on a full-time basis for more than four months, to complete a training and/or competency evaluation program and be competent to provide care. Nursing homes must also provide regular performance reviews and in-service education (including training for individuals providing nursing and nursing-related services to residents with cognitive impairments) to assure that nurse aides are competent to

perform services. Regulations also require nurse aides to complete a training program lasting no less than 75 clock hours of training, at least 16 of which must be supervised practical training, in order to be certified.

A number of states have also used enhanced Medicaid funding to improve recruitment and retention of nurse aides working in nursing homes. For these states, some portion of an increase in state Medicaid payments (and other public funding sources) to long-term care providers must be (or intended to be) used to increase wages and or benefits for nursing aides. Typically, this "wage pass-through" legislation has either designated some specified dollar amount (e.g., \$.50 or \$1.00) or a certain percentage of increased state payments to be used for wages and or benefits.

Senate Bill

Section 2211 would require the Secretary of HHS to carry out activities that provide incentives for individuals to train for, seek, and maintain employment providing direct care in long-term care facilities.

Coordination of Federal Agencies to Train Long-Term Care Staff. The Secretary of HHS would be required to coordinate activities with the Secretary of Labor and the Assistant Secretary of ACF to provide incentives to welfare-to-work and TANF recipients to train for and seek employment as direct care providers in long-term care facilities.

Career Ladders, Wage and Benefit Grants. The Secretary of HHS would be required to award grants to long-term care facilities to conduct programs that offer direct care employees continuing training and varying levels of certification. Grants would also be used to provide for or make arrangements with employers to pay bonuses, or other increased compensation or benefits, to employees who obtain certification. To receive grant funds, long-term care facilities would submit applications directly to the Secretary.

Management Improvement. The Secretary of HHS would be required to award grants to long-term care facilities for training and technical assistance. Eligible recipients could include administrators, directors of nursing, staff developers, charge nurses, and others who establish or implement management practices for direct care employees. Training and technical assistance would be intended to promote retention and could include: (1) the establishment of human resource policies rewarding high performance, including policies that provide for improved wages and benefits on the basis of job reviews; (2) the establishment of motivational organizational practices; (3) the creation of a workplace culture that respects and values caregivers and their needs; (4) the promotion of a workplace culture that respects the rights of residents and results in improvements in their care; and (5) the establishment of other programs that promote high quality care, such as continuing education for certified nurse aide employees. Long-term care facilities would submit applications to the Administrator to qualify for grant funds.

Each year, the Secretary would be required to evaluate the above-listed activities and, using those results, determine activities that may be funded in subsequent years. The Secretary would be required to develop accountability measures to ensure that funded activities under this title benefit eligible employees and increase the stability of the long-term care workforce.

The bill would authorize \$25 million for each of FYs 2006-2009.

Collaborative Efforts to Enhance Communication on Promoting Quality and Preventing Abuse and Neglect in Long-Term Care (Section 2212 of the Social Security Act)

Present Law

No provision.

Senate Bill

Section 2212 would require the Secretary, after consultation with the Attorney General, to establish pilot projects to improve long-term care. These projects would provide grants to eligible partnerships to develop collaborative and innovative approaches to improve quality and prevent abuse and neglect in long-term care.

Eligible partnerships refer to multidisciplinary community entities, such as a community of nursing facilities, state legal assistance developers, advocates for residents of long-term care facilities, state long-term care ombudsmen, surveyors, the state agency with responsibility for adult protective services, the state agency with the responsibility for licensing long-term care facilities, law enforcement agencies, courts, family councils, residents, certified nurse aides, registered nurses, physicians, and other appropriate entities and individuals. Applicants would submit applications to the Secretary to receive funds.

The bill would authorize \$2.5 million for each of FYs 2006- 2009.

Collaborative Efforts to Develop Consensus Around the Management of Certain Quality-Related Factors (Section 2213 of the Social Security Act)

Present Law

No provision.

Senate Bill

Section 2213 would authorize the Secretary, after consultation with the Attorney General, to provide a limited number of grants to entities that establish multidisciplinary panels to address and develop consensus on quality improvements in long-term care. At least one grant would establish a panel to develop consensus on methods of managing resident-to-resident abuse in long-term care. Entities that receive grant funds would be required to establish a panel to address a specific subject and ensure that the panel uses the funds to establish a subject-related goal; identify best practices and determine the best way to implement them; and determine an effective way of distributing information. Applicants would be required to submit applications to the Secretary to receive funds.

The bill would authorize \$2 million for each of FYs 2006-2009.

Adult Protective Services and Demonstration Grant Programs (Section 2214 of the Social Security Act)

Adult Protective Services - Functions

Present Law

Provisions related to some functions of adult protective services are found in Title XX of the Social Security Act (Social Services Block Grant) (administered by the Administration on Children and Families (ACF)) and the Older Americans Act (administered by AoA), both in DHHS, as follows.

Title XX of the Social Security Act. Title XX provides funds to states to carry out a wide range of social services on behalf of various groups. The statute sets out a number of goals for the use of these funds, including the goal of "preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests"

Funds are generally administered by state social services or human services agencies (for this purpose, sometimes referred to as adult protective services offices), and/or state agencies on aging. Funding for Title XX is as follows: FY 1998, \$2.299 billion; FY 1999, \$1.909 billion; FY 2000, \$1.775 billion; FY 2001, \$1.725; FY 2002, \$1.7 billion; FY 2003, \$1.7 billion; and FY 2004, \$1.7 billion.

No match is required for federal Title XX funds, and federal law does not specify a sub-state allocation formula. In other words, states have complete discretion for the distribution of funds within their borders. Based on the 2002 Annual Report for the Social Services Block Grant, 34 states used some portion of Title XX funds for adult protective services, and approximately 425,000 adults received adult protective services that were funded in whole or in part with Title XX funds. Of all state expenditures under Title XX for 2002, 5.8% were for protective services for adults.¹

Older Americans Act. Title II of the Older Americans Act requires the Assistant Secretary on Aging in DHHS to establish a National Center on Elder Abuse. The Center is required to, among other things, compile, publish and disseminate research and training materials on prevention of elder abuse, neglect, and exploitation; maintain a clearinghouse on programs showing promise in preventing elder abuse, neglect, and exploitation; conduct research and demonstrations projects that identify causes and prevention, and treatment; and provide technical assistance to state agencies and other organizations in planning and improving prevention programs. AoA awards funds to six organizations that share the funds: the National Association of State Units on Aging, which administers the Center, in cooperation with the National Protective Services Association, the National

¹ A percentage of *expenditures* differs from a percentage of the Title XX *appropriation*. Title XX expenditures include spending from funds transferred from the Temporary Assistance for Needy Families (TANF) program to Title XX.

Committee for the Prevention of Elder Abuse, the American Bar Association, and the Clearinghouse on Abuse, Neglect and Exploitation.

Funding history for the Center is as follows: FY1998, \$250,000; FY1999, \$200,000; FY2000, \$815,250; FY2001, \$815,000; FY2002, \$815,000, and FY2003, \$815,000. The 2000 amendments to the Act required that the Center receive at least the same amount of funds as it received in FY2000.

Title III of the Older Americans Act authorizes, but does not require, state agencies on aging to conduct various activities related to prevention of elder abuse, neglect and exploitation. No federal funds are separately allotted for this purpose under Title III, and states decide how much of their Title III allotments are to be used for prevention activities. In many states, state agencies on aging administer funds for adult protective services funded under Title XX of the Social Security Act (described above).

Title VII of the Older Americans Act authorizes a program of grants to states to carry out activities related to prevention of elder abuse, neglect, and exploitation. Funds are administered by state agencies on aging. In FY2004, the appropriation level for this program under Title VII is \$5.2 million.

Senate Bill

Section 2214 would establish certain functions with respect to *Adult Protective Services (APS)* to be administered by the Secretary.

Adult Protective Services - Functions. Functions include providing funding and support to state and local adult protective services offices that investigate reports of abuse, neglect and exploitation of elders and vulnerable adults; collecting and disseminating information on abuse in coordination with the Department of Justice; developing and disseminating information on best practices; and conducting research and providing technical assistance to states that provide or fund protective services.

To carry out these functions, the bill authorizes \$3 million for FY 2006 and \$4 million for each of FYs 2007-2009.

Adult Protective Service Grant Program (State Formula Grants)

Present Law

No provision in current law for state formula grants that are *solely and specifically* targeted at providing adult protective services and carrying out projects to employ workers having caseloads of elders alone.

Some other legislation is related to adult protective services, as follows.

Title XX of the Social Security Act. Title XX provides funds to states to carry out a wide range of social services on behalf of various groups. The statute sets out a number of goals for the use of these funds, including the goal of "preventing or remedying neglect, abuse, or exploitation of children and adults

unable to protect their own interests ...” Funds are generally administered by state social services or human services agencies (for this purpose, sometimes referred to as adult protective services offices), and/or state agencies on aging.

Title III of the Older Americans Act authorizes, but does not require, state agencies on aging to conduct various activities related to prevention of elder abuse, neglect and exploitation, which may include adult protective services. No federal funds are separately appropriated for this purpose under Title III, and states decide how much of their Title III allotments are to be used for these activities. In many states, state agencies on aging administer funds for adult protective services funded under Title XX of the Social Security Act (described above).

Title VII of the Older Americans Act authorizes a program of grants to states to carry out activities related to prevention of elder abuse, neglect, and exploitation. Funds are administered by state agencies on aging. In FY2004, the appropriation level for this program under Title VII is \$5.2 million.

Senate Bill

Grants to Improve Worker Caseloads for Adult Protective Services. The Secretary would be required to award annual grants to enhance adult protective service programs provided to elders by states and local governments. These grants are to support projects that employ workers who have caseloads consisting only of elders and to identify the number of cases that should comprise a reasonable elder caseload.

Formula for Distribution of Funds. Distribution of funds to states would be based on a formula that takes into account the number of elders (people age 60 or older) residing in a state relative to the total U.S. population of elders. States would receive no less than 0.75% of the grant program's annual appropriation. The District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa would receive no less than 0.1% of the annual appropriation. In order to comply with these minimum amount requirements, the Secretary is required to make pro rata reductions in amounts to be allotted.

Use of Funds. Funds may be used only by states and local governments to provide adult protective services for elders. State receiving funds would be required to provide these funds to the agency or unit of state government having legal responsibility for providing adult protective services in the state. Each state would be required to use these funds to supplement and not supplant other federal, state, and local public funds expended to provide adult protective services.

Reports. Each state would be required to submit a report to the Secretary comparing outcomes of workers who carry caseloads consisting only of elders with workers whose caseloads include other individuals. The report would also be required to identify a reasonable worker/client elder caseload. The Secretary would be required to submit to the appropriate congressional committees a report compiling, summarizing, and analyzing the state reports, as well making recommendations for appropriate legislative or administrative action. This report is to be submitted no later than October 1, 2010.

The bill would authorize \$100 million for each of Fys 2006-2009.

State Adult Protective Service Grants (Demonstration Program)

Present Law

No provision in current law specifically authorizes a dedicated amount of funds for state adult protective service demonstration programs. However, the Older American Act authorizes a related demonstration program (as follows), but no specific authorization is specified by law.

Section 413 of the Older Americans Act, *Older Individuals' Protection from Violence Projects*, requires the Assistant Secretary to award funds to states, area agencies on aging, and nonprofit organizations, or tribal organizations to carry out a wide range of projects related to protection of older persons from violence. Funds are to be used to: support local communities to coordinate activities regarding intervention in and prevention of abuse, neglect, and exploitation; develop outreach to assist victims; expand access to family violence and sexual assault programs (including shelters, rape crisis centers, and support groups) as well as mental health services, safety planning and other services; and promote research on legal organization and training impediments to providing services through shelters and other programs.

Senate Bill

Section 2214 would require the Secretary to establish grants to states for adult protective service demonstration programs. Funds may be used by state and local units of government to conduct demonstration programs that test: training modules developed for the purpose of detecting or preventing elder abuse; methods to detect or prevent financial exploitation and elder abuse; the feasibility of establishing safe havens for victims; whether training on elder abuse forensics enhances the detection of abuse by employees of state or local government; and other related matters. States would be required to submit applications to the Secretary.

Each state receiving funds would be required to submit a report on the demonstration to the Secretary. The Secretary would be required to submit to the appropriate congressional committees a report compiling, summarizing, and analyzing the state reports, as well making recommendations for appropriate legislative or administrative action. This report is to be submitted no later than October 1, 2010.

The bill would authorize \$25 million for the period FY2006-2009.

Subtitle C – Collection of Data, Dissemination of Information and Studies

Collection of Uniform National Data on Elder Abuse, Neglect and Exploitation (Section 2221 of the Social Security Act)

Present Law

No provision that establishes an ongoing, uniform national data collection process or provides grants to states to assist with data collection.

A related law, the *Family Violence Prevention and Services Act of 1992* (P.L. 102-295), required HHS to conduct a study of the national incidence of abuse, neglect, and exploitation of elderly persons. This study, referred to as "the National Elder Abuse Incidence Study," used a nationally-representative sample of 20 counties in 15 states and combined local Adult Protective Services (APS) reports with reports from other community service agencies to estimate the number of new elder abuse and neglect cases over a given period. The final report for this study was released by HHS in 1998.

In addition to the study described above, the federal government has periodically surveyed state APS units over the last 20 years on the prevalence of elder abuse, neglect and exploitation. In these surveys, there was significant variation among the states in the definitions used and the comprehensiveness of data collected. This variation has created challenges in establishing a national data set and identifying trends in abuse, neglect and exploitation.

Senate Bill

Section 2221 would establish as the purpose of the section the improvement, streamlining, and promotion of uniform collection, maintenance and dissemination of national data regarding elder abuse, neglect and exploitation. The activities of the Secretary would be carried out in three phases.

The Secretary would be required to develop, under Phase I, a method for collecting national data regarding elder abuse, neglect and exploitation and uniform national data reporting forms adapted to each relevant entity or discipline (e.g., health, public safety, social and protective services and law enforcement). The Secretary would be required to consult with the Attorney General and work with experts in the Bureau of Justice Statistics and the Office of Justice Programs to develop this method for national data collection. The national data reporting forms must include the definitions of Title XXII for determining whether an event will be reportable. Finally, the activities that would be carried out under this section must ensure the protection of individual health privacy consistent with the regulations under Section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any state and local privacy regulations. Phase I must occur no later than one year after the date of enactment.

Phase II would require the Secretary to ensure that the national data reporting forms and data collection methods (developed under Phase 1) would be pilot tested in six states selected by the Secretary. After pilot testing the data collection efforts, the Secretary must review the findings, consult with the Attorney General and other relevant experts, and adjust the national data reporting forms and data collection methods as necessary. Phase II must occur no later than one year following the completion of activities under Phase I.

Phase III would require the Secretary to submit the national data reporting forms and instructions to (1) the heads of the relevant components of DHHS, the Department of Justice, the Department of the Treasury, and other appropriate federal entities; and (2) the Governor's office of each state for collection from all relevant state entities of data including health care, social services, and law enforcement data.

In Phase III, the Secretary would be authorized to award grants to states to improve data collection activities relating to elder abuse, neglect and exploitation. Each state that wants to apply for a grant, must submit an application to the Administrator following the prescribed requirements. Each state receiving a grant in a fiscal year would be required to submit data for the calendar year that begins during that year using the national data forms.

The amount of each grant to a state must be distributed using the following method: For the first fiscal year in which a state receives grant funds, the Secretary would be required to initially distribute 50% of those funds. The remaining funds are to be distributed at the end of the calendar year that begins during that fiscal year if the Secretary determines that the state has properly reported data required under this section for the calendar year. For subsequent years, the Secretary would be required to distribute grant funds to a state for a fiscal year if the state properly reported required data for the calendar year that ends during that fiscal year. The reports submitted by states must indicate the state and year in which the event occurred and identify the total number of events that occurred in each state during the year and the type of event.

The Secretary would be required to submit a report regarding the activities required by this section to Congress including the Committee on Finance and the Special Committee on Aging of the Senate. The first report must be submitted no later than one year after the date of enactment of the bill and annually thereafter.

To carry out the activities of this section, the bill would authorize \$10 million for FY2006; \$30 million for FY2007; and \$100 million for each of FYs 2008 and 2009.

Long-Term Care Consumer Clearinghouse (Section 2222 of the Social Security Act)

Present Law

No provision requiring establishment of a long-term care consumer clearinghouse.

In related activities, DHHS has funded some states to establish state-based consumer-friendly access to information about long-term care services. In FY2003 and FY2004, the Centers for Medicare and Medicaid (CMS) and AoA awarded approximately \$18 million in grants to states for the purpose of assisting states in their efforts to create a single, coordinated system of information and access for all persons seeking long term care to minimize confusion, enhance individual choice, and support informed decision-making. A total of 24 states have received grants for this purpose. Some of the common activities under this grant program include information and referral, outreach, counseling about public benefits and long-term care options, and case management. States' methods for implementing the grant may vary; some states have established an actual physical location, and other states have established a statewide clearinghouse through a toll-free number or a web-based information site.

In addition, CMS has made available to the public, via its website, a comparison of Medicare and Medicaid-certified nursing homes and home health agencies. The information provides detailed facility and agency information and characteristics, and contains several measures of quality (e.g., improvement in mobility). This website does not cover assisted living facilities, group homes and other residential facilities that are not nursing facilities; nor does it cover non-medical, non-certified, home and community-based long-term care services.

Senate Bill

Section 2222 would require the Secretary to establish a long-term care consumer clearinghouse which must provide comprehensive detailed information, in a consumer-friendly form, to consumers about choices relating to long-term care providers.

The clearinghouse is to include information about obtaining the services of, and employing, caregivers; options for residential long-term care (e.g., the type of care provided by nursing facilities, and the type of care provided by group homes and other residential facilities); benefits available through the federal health care programs; and links to federal and state websites that describe the care available through specific long-term care facilities including information about the satisfaction of those residents and their families with the care provided. The clearinghouse must also provide information (from states and other sources) on long-term care providers including assisted living facilities, board and care facilities, congregate care facilities, home health care providers, and other long-term care providers.

To carry out the activities of this section, the bill would authorize \$2 million for FY2006; \$3 million for FY2007; and \$4 million for each of FYs 2008 and 2009.

Consumer Information about the Continuum of Residential Long-Term Care Facilities (Section 2223 of the Social Security Act)

Present Law

No provision.

Senate Bill

Section 2223 would require the Secretary, in consultation with the Attorney General, to conduct a study on consumer concerns relating to residential long-term care facilities other than nursing facilities. The study may be carried out either directly or through a grant. The organization conducting the study must develop definitions for classes of residential long-term care facilities and collect information on the following features of these facilities: prices, level of services, oversight and enforcement provisions, and admission and discharge criteria.

The Secretary would be required to prepare a report containing the results of the study and submit the report to the Elder Justice Coordinating Council, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance and the Special Committee on Aging of the Senate.

To carry out the study, the bill would authorize \$3 million for each of FYs 2006-2009.

Evaluations of Elder Justice Programs (New Section 2224 of the Social Security Act)

Present Law

No provision.

Senate Bill

Section 2224 would require the Secretary of HHS to reserve a portion of the funds appropriated in each program under Title XXII to be used to provide assistance to eligible entities to conduct validated evaluations of the effectiveness of the activities funded under each program under Title XXII. To be eligible to receive these funds, an eligible entity must submit an application to the Secretary following the timing and requirements prescribed by the Secretary including a proposal for the evaluation.

Entities would be required to submit to the Secretary and appropriate congressional committees a report containing the results of the evaluation together with any recommendations deemed appropriate. The report would be due by the date specified by the Secretary.

Amendments to the Social Security Act — Long-Term Care Facilities (Section 101(b) of the bill)

Present Law

No federal provisions for mandatory reporting of crimes in federally funded long-term care facilities. There are some federal laws and regulations under Medicare and Medicaid in the event that a facility participating in either of those programs closes.

Reporting. Based on a 2000 survey of state Adult Protective Services systems, all states had elder/adult abuse reporting laws. State laws varied in who was a mandated reporter and who was encouraged to report incidents of elder/adult abuse. Many states and territories named health care professionals, such as nurses, physicians and nurse aides, as mandated reporters of elder/adult abuse. Five states did not list anyone as a mandated reporter.

Eleven states reported that there were no statutory consequences for failure of mandated reporters to report abuse; the remaining states and the District of Columbia and Guam had a specified consequence. The most common consequence for failing to report was a misdemeanor with a possible fine and/or jail sentence. State law also varied with regard to specifying a time frame within which reporters were required to report suspicion of abuse. Nineteen states had no time frame. Of those that specified a time frame, the requirements varied from immediately to more than four days.

Notification of Facility Closure. If a long-term care facility that receives federal funds through participation in Medicare or Medicaid closes, current federal laws and regulations provide some guidance on the parties that need to be notified and the process for relocating residents. If a facility wants to terminate its status as a Medicare provider (for example, due to facility closure), the facility must notify both CMS and the public no later than 15 days in advance of the proposed termination date. If a facility wants to terminate its status as a Medicaid provider, federal regulations do not specify a timeframe for notifying federal or state agencies; however, the facility is required to notify Medicaid residents at least 30 days before transferring or discharging him or her. Facility closure is one circumstance in which a resident would need to be transferred.

The state Medicaid agency has the primary responsibility for relocating Medicaid patients and for ensuring their safe and orderly transfer from a facility that no longer participates in Medicaid to a participating facility that meets acceptable standards. CMS has provided guidance to states concerning relocating patients. Each state is expected to have a plan that describes the relocation of patients. Additionally, the notice to residents is to include information as to how to contact the ombudsman established by the Older Americans Act.

Senate Bill

Reporting of Crimes in Federally-funded Facilities. Section 101(b) of the bill would require reporting to law enforcement of crimes occurring in federally funded long-term care facilities that receive at least \$10,000 in federal funds during the preceding year. The owner or operator of these facilities would be required to annually notify each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that they are required to report any reasonable suspicion of a crime against any person who is a resident of or receiving care from the facility. These individuals are referred to in this section as "covered individuals." Suspected crimes must be reported to the Secretary and one or more law enforcement entities for the political subdivision in which the facility is located.

Timing of Reporting. If the events that cause the suspicion of a crime result in serious bodily injury, the covered individual must report the suspicion immediately, but not later than two hours after forming the suspicion. If the events that cause the suspicion do not result in serious bodily injury, the individual must report the suspicion not later than 24 hours after forming the suspicion.

Penalties for Non-Reporting. If a covered individual does not report suspicion of a crime within the timeframe described above, the individual will be subject to a civil money penalty of up to \$200,000, or the Secretary shall classify the individual as an 'excluded individual' (i.e., any employer of the individual is unable to receive federal funds) for a period of not more than three years. If a covered individual does not report suspicion of a crime within the timeframe described above and this violation exacerbates the harm to the victim, or results in harm to another person, the individual will be subject to a civil money penalty of up to \$300,000, and the Secretary shall classify the individual as an 'excluded individual' (i.e., any employer of the individual is unable to receive federal funds) for a period of not more than three years.

If an individual is classified as an "excluded individual," any entity that employs that individual will not be eligible to receive federal funds. The Secretary

may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this section. Underserved populations are defined as the population of an area designated by the Secretary as an area or population group with a shortage of elder justice programs. These may include those that are geographically isolated, racial and ethnic minority populations, and populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

Additional Penalties for Retaliation. A long-term care facility may not retaliate against an employee for making a report, causing a report to be made, or for taking steps to make a report. Retaliation includes discharge, demotion, suspension, threats, harassment, denial of a promotion or other employment-related benefit, or any other manner of discrimination against an employee in the terms and conditions of employment because of lawful acts done by the employee. Long-term care facilities may also not retaliate against a nurse by filing a complaint or report with the appropriate state professional disciplinary agency because of lawful acts done by the nurse.

If a long-term care facility does retaliate, it shall be subject to a civil money penalty of up to \$200,000 or the Secretary may exclude it from participation in any federal health care program for a period of two years.

Notice to Employees. Each long-term care facility must post conspicuously, in an appropriate location, a sign specifying rights of employees under this section. The sign shall include a statement that an employee may file a complaint against a long-term care facility that violates the provisions of this section with the Secretary. The notice must also contain information as to how to file a complaint.

Notification of Public Agencies and Safety of Residents in the Event of Facility Closure. In addition, if a long-term care facility (that receives at least \$10,000 in federal funds during the previous year) is going to close, the owner or operator of the facility must submit to the Secretary and the appropriate state regulatory agency written notification of an impending closure within 60 days prior to the closure date. In the notice, the owner or operator must include a plan for transfer and adequate relocation of residents, including assurances that residents will not be moved to a facility which provides substandard care or for which an administrative or law enforcement action is pending. Within 10 days after the facility closes, the owner or operator of the facility must submit to the Secretary, and the appropriate state agency, information on where the residents were transferred to and when.

Anyone who owns a skilled nursing facility that fails to comply with the notification of closure and reporting requirements shall be subject to a civil monetary penalty of up to \$1,000,000, exclusion from participation in the programs under the Social Security Act, and any other civil monetary penalties and assessments.

A civil monetary penalty or assessment will be imposed in the same manner as a civil monetary penalty, assessment or exclusion under Section 1128A of the Social Security Act.

Title II – Department of Justice

Victim Advocacy Grants (Section 201 of the bill)

Present Law

Title II — Section 1209. Enhancing Protections for Older and Disabled Women from Domestic Violence and Sexual Assault. Section 1209(c) of the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) (Protections for Older and Disabled Individuals from Domestic Violence and Sexual Assault) authorizes the Attorney General to award grants to states, the District of Columbia, tribal governments, and territories through the Services, Training, Officers, Prosecutors (STOP) formula grant program. Grant funding is to be used for developing, enlarging, or strengthening programs that assist law enforcement, prosecutors, courts, and others in helping older and disabled women who are victims of domestic violence or sexual assault. This assistance can include recognizing, investigating, and prosecuting instances of such violence or assault and targeting outreach and support, counseling, and other services to these older and disabled victims. The Act authorizes \$5 million for each FYs 2001-2005 for this purpose.

Senate Bill

The bill would permit the Attorney General, after consultation with the Secretary of HHS to award grants to eligible entities to study the needs of victims of elder abuse, neglect and exploitation.

It would authorize \$2.5 million for FY2006 and \$3 million for each of FYs 2007-2009 for pilot programs that would: (1) develop programs for victims of elder abuse, neglect, and exploitation; (2) provide training to relevant personnel; and (3) examine special approaches aimed at meeting the needs of victims of elder abuse, neglect and exploitation.

Supporting State and Local Prosecutors in Elder Justice Matters (Section 202 of the bill)

Present Law

Title II, Section 1209 of the Violence of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) permits the Attorney General to make grants for training programs to assist front line law enforcement personnel to enhance their ability to address, investigate and prosecute instances of elder abuse, neglect, and exploitation. The Administration obligated \$4.9 million in FY2003 and has estimated an obligation of \$666 thousand for FY2004 for the Training Grants to Stop Abuse and Sexual Assault of Older Individuals or Individuals with Disabilities program.

Senate Bill

The bill would require the Attorney General, after consultation with the Secretary of HHS to award grants to eligible entities to provide support to state and local prosecutors who handle elder justice-related cases. The grants would also be used to fund the creation of a Center for the Prosecution of Elder Abuse,

Neglect, and Exploitation that would advise and support prosecutors with respect to elder abuse, neglect, and exploitation. Among other things, the Center would be required to collaborate with experts in the field and the Advisory Board on Elder Abuse, Neglect, and Exploitation; and provide local prosecutors and their staff with relevant training and technical support with respect to handling, preventing and prosecuting elder abuse, neglect, and exploitation.

The bill would authorize \$6 million for FY2006, and \$8 million for each of FYs 2006- 2009 to carry out these grants.

Supporting Federal Cases Involving Elder Justice (Section 203 of the bill)

Present Law

No provision.

Senate Bill

The bill would require the Attorney General to hire additional federal prosecutors and make funding available to them to enter into contracts with experts such as nurse-investigators and other experts to identify, assist with, or pursue cases related to elder justice. The bill would also permit the Attorney General to fund a resource group to assist prosecutors nationwide with respect to elder justice matters.

The bill would also require that the Office of Inspector General in DHHS enter into contracts with nurse investigators and other experts to investigate and pursue failure of care allegations.

The bill would authorize \$3.25 million for FY2006, and \$4.5 million for each of FYs 2007-2009.

Supporting Law Enforcement in Elder Justice Matters (Section 204 of the bill)

Present Law

Title II, Section 1209 of the Violence of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) permits the Attorney General to make grants for training programs to assist front line law enforcement personnel to enhance their ability to address, investigate and prosecute instances of elder abuse, neglect, and exploitation. The Administration obligated \$4.9 million in FY2003 and has estimated an obligation of \$666 thousand for FY2004 for the Training Grants to Stop Abuse and Sexual Assault of Older Individuals or Individuals with Disabilities program.

Senate Bill

The bill would require the Attorney General, after consultation with the Secretary of HHS to award grants to eligible entities to provide training and technical support to front line law enforcement personnel with respect to elder justice matters.

The bill would authorize \$6 million for FY2006, and \$8 million for each year of FYs 2007-2009.

Establishment and Support of Elder Abuse, Neglect, and Exploitation Forensic Centers (Section 205 of the bill)

Present Law

No provision.

Senate Bill

The bill would require the Attorney General to award grants to eligible entities to establish and operate both stationary and mobile forensic centers and to develop forensic expertise pertaining to elder abuse, neglect, and exploitation. With respect to the stationary forensic centers, the bill would require the Attorney General to make four grants to higher education institutions with demonstrated expertise in forensics or commitment to preventing or treating elder abuse, neglect, or exploitation; and with respect to mobile forensic centers, the bill would require the Attorney General to make six grants to appropriate entities.

Funding would be authorized for the centers to: (1) develop forensic markers that would determine whether abuse or neglect occurred and whether a crime was committed; (2) conduct research to describe and disseminate information on the forensic markers; (3) determine methodologies for how and when intervention should occur; and (4) develop forensic expertise with respect to elder abuse, neglect, and exploitation in order to provide relevant evaluation, intervention, support and advocacy, case review and tracking. The bill would also require the Attorney General, in coordination with the Secretary, to use data to develop the capacity to collect forensic evidence.

The bill would authorize \$4 million in funding for FY2006, \$6 million for FY2007 and \$8 million for each of FYs 2008-2009.

Model State Laws and Practices (Section 206 of the bill)

Present Law

No provision.

Senate Bill

The Attorney General, after consultation with the Secretary of HHS, would be required to: (1) conduct a study and prepare a report on state laws and practices with respect to elder abuse, neglect, and exploitation; (2) report to all appropriate congressional committees on findings no later than two years after enactment of the Elder Justice Act; and (3) publish its findings.

In reporting to Congress on state laws and practices issues, the bill would require the following: (1) development of a comprehensive description and comparative analysis of state laws and practices; (2) recommendations on models based on analysis of the most effective state laws and practices; (3) provision of

a definition for "elder," "abuse," "neglect," and "exploitation;" (4) definition of who is a mandated reporter, to whom and when a mandated reporter must report information, and what the consequences are for not reporting information; and (5) information on data retention issues.

The report would also be required to contain information on state laws and practices issues with respect to evidentiary, procedural, sentencing, and choice of remedies matters. Additionally, the report would be required to contain information on: issues pertaining to state laws that require immediate reporting of all nursing home deaths to the county coroner as well as issues with respect to fiduciary laws (including guardianship and power of attorney laws); laws that permit or encourage banks or bank employees to prevent and report suspected elder abuse, neglect, and exploitation; laws that may impede research on elder abuse, neglect, and exploitation; and practices related to the enforcement of such laws and other aspects of elder justice.

The bill would authorize \$2.5 million for FY2006, and \$3 million for each of fiscal years 2007-2009.

Evaluations of Department of Justice Elder Justice Programs (Section 207 of the bill)

Present Law

No provision.

Senate Bill

The bill would require the Attorney General to reserve a portion of funds appropriated to carry out the programs described in this title to be used to aid eligible entities to conduct program evaluations. Eligible entities would be required to submit an application to the Attorney General in order to receive the funding and report to the Attorney General and Congress on its findings and recommendations from the evaluation.

Other Provisions

Present Law

No provision.

Senate Bill

The bill amends the title to read: An Act to amend the Social Security Act to enhance the social security of the Nation by ensuring adequate public-private infrastructure and resolve to prevent, detect, treat, understand, and intervene in elder abuse, neglect, and exploitation, and for other purposes.

**RESPONSE TO THE SENATE COMMITTEE ON FINANCE'S
REQUEST FOR INFORMATION FROM NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. Name: (Including any former names used.)

JOEY RUSSELL GEORGE (Joseph was used from 1978 – 1981)

2. Position to which nominated:

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

3. Date of Nomination:

November 19, 2003

4. Address: (List current residence, office, and mailing addresses.)

Home/Mailing: **220 South West Street
Alexandria, Virginia 22314**

Office: **Office of Inspector General
Corporation for National and Community Service
1201 New York Avenue, NW., Suite 830
Washington, D.C. 20525**

5. Date and place of birth:

October 8, 1963, in Brooklyn, New York

6. Marital Status: (Include maiden name of wife or husband's name.)

Single

7. Names and ages of children:

I do not have children.

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

Harvard Law School – 1985 to 1988. J.D. received June 1988

Howard University – 1981 to 1985. B.A. received May 1985

Brooklyn Technical High School – 1977 to 1981. Diploma received in June 1981

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Inspector General, Corporation for National and Community Service, Washington, D.C., September 2002 to present.

Subcommittee Staff Director and Chief Counsel, Committee on Government Reform's Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations (formerly entitled the Subcommittee on Government Management, Information and Technology), U.S. House of Representatives, Washington, D.C., January 1995 to August 2002.

Associate, Kramer, Levin, Naftalis, Nessen, Kamin & Frankel, New York, N.Y., February 1993 to December 1994.

Associate Director for Policy, The White House, Washington, D.C., July 1991 to January 1993.

Assistant General Counsel, The White House Office of Management and Budget, Washington, D.C., January 1990 to July 1991.

Prosecutor, Queens County District Attorney's Office, Kew Gardens, N.Y., August 1988 to January 1990.

Summer Associate, Bankers Trust Company, New York, N.Y., August 1987 to September 1987.

Summer Associate, Wiley, Rein & Fielding, Washington, D.C., July 1987 to August 1987.

Summer Associate, Donovan, Leisure, Newton & Irvine, New York, N.Y., June 1987 to July 1987.

Summer Associate, Bankers Trust Company, New York, N.Y., August 1986 to September 1986.

**Summer Associate, Epstein, Becker, Borsody & Green, New York, N.Y.,
June 1986 to August 1986.**

**Legal Associate, Bankers Trust Company, New York, N.Y., May 1985 to
August 1985.**

10. **Government Experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)**

None.

11. **Business Relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.)**

**Undergraduate Student Trustee, Board of Trustees, Howard University,
Washington, D.C., July 1984 to July 1985.**

12. **Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)**

Bar of the United States Supreme Court.

**Bar of the United States District Court, Southern and Eastern Districts of
New York.**

Bar of the State of New York.

Bar of the State of Connecticut.

The Association of the Bar of the City of New York.

American Bar Association, Vice Chairman, Administrative Law Section.

Ripon Society, National Vice President.

Ripon Educational Fund, President.

Harvard Law School Chapter, Ripon Society, President.

Big Brother's Program.

City Harvest Food Bank, Board of Advisors.

Rotary Club of Washington, D.C.

Southern Poverty Law Center, Leadership Committee.

National Association for the Advancement of Colored People.

National Rifle Association.

Sierra Club.

Harvard Club of the City of New York.

Harvard Club of Washington, D.C.

University Club of Washington, D.C., Vice Chair, Membership Committee.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

**Republican National Committee.
Alexandria Republican City Committee – various activities.
Victory 2000 – Public speaking and drafted article.
Elizabeth Dole for President – Finance Committee.
Bob Dole for President – Transition Team Executive Committee and public speaker.
Giuliani for Mayor – vote integrity.
New York City Republican Party.
New York State Republican Party.
Republican Party of the State of Virginia.
Cleveland for Mayor – various activities.**

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the last 10 years.

According to the records available to me, and to the best of my recollection, the following is a record of the contributions I have made over the last ten years:

**Republican National Committee – \$180
Republican National Committee Victory 2000 – \$95
Friends of Jost – \$100
Bush for President 2000 – \$900
Bush Transition – Not Available
Bush-Cheney Recount Fund – Not Available
Elizabeth Dole for Senate – \$75
Elizabeth Dole for President – \$1,000
Bob Dole for President – \$1,000
Cleveland for City Council – \$200
Cleveland for Mayor – \$350
Stoker for Congress – \$1,850
McIntosh for Governor – \$250
Gilmore for Governor – Not Available
Pataki for Governor – Not Available
Friends of Giuliani Exploratory Committee – \$500
Adam Clayton Powell for City Council – Not Available**

New York State Republican Party – Not Available
New York City Republican Party – Not Available
Jerry Moran for Congress – Not Available
Allen for Governor – Not Available
Friends of Allen – Not Available
Rogers for Congress – 150
McVay for City Council – \$50
John Hines for City Council – Not Available

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Phi Beta Kappa
Pi Sigma Alpha (Political Science Honor Society)
Phi Alpha Theta (History International Honor Society)
Dean's List Howard University
Hammer Award (For work on the Y2K issue)
Howard University Citation of Achievement

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

"Why Blacks Should Vote for Bush," published on a web site directed towards African-American professionals, October 2000.

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

I have spoken frequently on the role of the Inspector General; however, my remarks were delivered without the use of a formal statement.

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

As I currently serve as an Inspector General, I have a keen understanding of the role and responsibility of the holder of the position. In addition to being a watchdog, the Inspector General has to have an appreciation of the mission of the organization to which he or she belongs. My experience thus far demonstrates my understanding of these dualities. The purpose of the Inspector General is not to interfere with the day-to-day operations of the Department. Its purpose is to ensure that if an allegation of waste, fraud or abuse is brought to the office's attention, appropriate action is taken to review the merits of the allegation and to ensure that the office responds accordingly.

As the Inspector General of the Corporation for National and Community Service, I have directed investigations of important matters affecting the agency, including its personnel policies and financial management practices. In regards to the latter, serious violations of accounting laws and regulations were revealed and examined by the office. In addition to identifying these issues, my office recommended changes in procedures that have been implemented by the agency.

Moreover, I served as the Staff Director and Chief Counsel of the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations. That subcommittee was responsible for overseeing the implementation of the Inspector General Act. In that capacity, I worked closely with the staffs of the authors of the Restructuring and Reform Act, as well as with the relevant staffs of the appropriation and authorization committees during the creation of the office of the Treasury Inspector General for Tax Administration (TIGTA). During the deliberations on this aspect of the legislation, I was involved in the drafting of the duties of the TIGTA. Given that experience, I know what the responsibilities of the incumbent of that position entails and sincerely believe I possess the wherewithal to perform them well.

B. FUTURE EMPLOYMENT RELATIONSHIPS

- 1. Will you sever all connection with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.**

Yes.

- 2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.**

No.

- 3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.**

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None to my knowledge.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None to my knowledge.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None.

4. Explain how you will resolve any potential conflicts of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

Not applicable. However, should a potential conflict come to my attention, I will advise and work with the appropriate officials at the Department to address the issue.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

I have been informed that this will be done.

Question 6 does not apply to this position.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I have devoted most of my professional life to public service in various positions of trust. In none of those positions have I violated – or been accused of violating – that trust.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

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

Senator John B. Breaux
Senator Orrin G. Hatch

PRODUCED BY STUDENTS OF THE UNIVERSITY OF ILLINOIS COLLEGE OF LAW



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

Senator John B. Breaux
Senator Orrin G. Hatch

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

Senator John Breaux, (D-LA) is the Ranking Member of the U.S. Senate Special Committee on Aging and is a senior member of the Committee on Finance.
Senator Orrin Hatch, (R-UT) is the Chairman of the U.S. Senate Committee on the Judiciary and is a member of the Senate Special Committee on Aging.

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I. Introduction

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

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

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

II. Highlights of the Elder Justice Proposal

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

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

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

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

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

1. BETTER INFORMATION FOR CONSUMERS AND OTHERS

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

2. BUILDING A KNOWLEDGE BASE AND FUNDING PROMISING PROJECTS

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

3. DEVELOPING FORENSIC CAPACITY

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

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

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

5. ENHANCING THE LAW ENFORCEMENT RESPONSE

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

6. TRAINING

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

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

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

8. MODEL STATE LAWS AND PRACTICES

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

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

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

1. SECURITY MEASURES

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

2. ENHANCING STAFFING

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

3. HELPING CONSUMERS

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

4. PROMOTING COLLABORATION

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

D. Evaluation—Determining What Works

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

III. Discussion

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

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

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

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

A. Congressional History

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

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

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

6. *Id.*7. *Id.*8. See HIDDEN PROBLEM, *supra* note 1.9. *Id.* at XIII-XVII.10. *Id.* at XIV-XV.11. See generally *id.*12. See generally *id.*13. *Id.* at 72.14. *Id.* at 123.15. *Id.* at 125.16. *Id.*

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

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

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

5. S. 2933, 107th Cong. § 2 (2001).

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

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

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

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

18. *Id.* at 47.

19. *Id.* at 3.

20. *Id.* at 4.

21. *Id.* at 35.

22. *Id.*

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

24. *Id.* at X.

25. *Id.* at 37.

26. *Id.* at 48.

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

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

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

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

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

27. *Id.* at 71.

28. *Id.*

29. *Id.*

30. *Id.*

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

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

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

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

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

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

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

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

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

37. *Secret Shame*, supra note 32.

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

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

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

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

B. Scope of Elder Abuse

1. DOMESTIC ELDER ABUSE

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

40. See generally *id.*

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

42. *Id.*

43. *Id.*

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

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

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

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

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

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

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

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

47. NEAIS, *supra* note 2.
48. *Id.*
49. *Id.* at 4-3.
50. *Id.*
51. *Id.*
52. *Id.* at 2-3.
53. *Id.*
54. *Id.* at 1-1.
55. *Id.*

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

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

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

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

56. *Id.* at 1-2.
57. *Id.* at 1-1.
58. *Id.* at 5-3.
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.* at 4-28.
63. *Id.* at fig. 4-9.
64. *Id.* at 4-13 fig. 4-3.
65. *Id.* at 4-17 fig. 4-4.
66. *Id.* at 4-20.
67. *Id.* at 4-2 tbl. 4-1.

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

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

2. INSTITUTIONAL ELDER ABUSE

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

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

68. *Id.* at 4-3.

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

70. *Id.*
71. Am. Soc'y on Aging, *Elder Abuse and Neglect Research Explored at World Congress*, <http://www.asaging.org/at/at-221/Research11.html> (last visited Mar. 17, 2003).

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

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

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

75. *Id.*

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

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

3. FINANCIAL EXPLOITATION OF THE ELDERLY

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

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

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

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

80. *Kemper Funds Study Reveals Investors over Age 55 Control Nation's Wealth*, SENIOR JOURNAL.COM (Jan. 31, 2003), at <http://www.seniorjournal.com/news/FTR-6-26-00shrcChrtlw1h.htm>.

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

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

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

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

C. Barriers and Challenges to Addressing Elder Abuse

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

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

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

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

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

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

88. *Id.*

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

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

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

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

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

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

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

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

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

93. *Id.*

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

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

96. *Id.*

97. *Id.*

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

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

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

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

98. *Id.*

99. *Id.*

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

101. Lachs, *supra* note 92.

102. *Id.*

103. Hawes, *supra* note 95.

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

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

106. Hawes, *supra* note 95.

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

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

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

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

107. *Id.*

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

109. Hawes, *supra* note 95.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

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

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

D. Promising Practices in Elder Abuse Treatment and Prevention

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

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

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

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

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

120. *Id.* at 4.

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

122. *Id.*

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

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

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

123. U.S. DEPT OF JUSTICE, OUR AGING POPULATION: PROMOTING EMPOWERMENT, PREVENTING VICTIMIZATION, AND IMPLEMENTING COORDINATED INTERVENTIONS 67 (2002).

124. *Id.*

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

126. *Id.*

127. *Id.*

128. *Id.*

129. Dyer, *supra* note 104.

130. *Id.*

131. *Id.*

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

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

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

132. *Id.*
 133. See generally *id.*
 134. See *id.*
 135. U.S. DEP'T OF JUSTICE, *supra* note 123, at 48.
 136. *Id.*
 137. *Id.*
 138. *Id.* at 65.
 139. *Id.*
 140. *Id.*
 141. *Id.*

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

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

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

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

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

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

142. *Id.* at 65-66.
 143. *Id.* at 66.
 144. *Id.*
 145. *Id.* at 15.
 146. *Id.* at 21.
 147. *Id.* at 22.
 148. *Id.*
 149. *Id.*
 150. *Id.*

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

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

IV. Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Secretary, HHS;

Attorney General, DOJ;

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

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

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

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

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

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

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

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

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

D. FEDERAL OFFICE AND DEDICATED FUNDING FOR ADULT PROTECTIVE SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. RESEARCH AND DEMONSTRATION PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. *Developing Data About Forensic Markers and Methodologies*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. ENHANCING THE LAW ENFORCEMENT RESPONSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. ENHANCING THE PUBLIC HEALTH AND SOCIAL SERVICE RESPONSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. MODEL STATE LAWS AND PRACTICES

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

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

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

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

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

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

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

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

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

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

I. THE ELDER JUSTICE INNOVATION FUND

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

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

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

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

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

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

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

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

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

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

C. ASSURING SAFETY OF RESIDENTS WHEN NURSING FACILITIES CLOSE

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

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

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

D. ENHANCING LONG-TERM CARE STAFFING

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

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

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

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

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

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

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

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

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

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

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

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

E. LONG-TERM CARE CONSUMER CLEARINGHOUSE ("LTCCC")

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

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

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

F. SUPPORTING THE LONG-TERM CARE OMBUDSMAN PROGRAM

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

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

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

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

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

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

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

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

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

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

NEW FEDERAL CAUSE OF ACTION FOR ELDER ABUSE AND NEGLECT

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

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

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

IV. EVALUATION—DETERMINING WHAT WORKS

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

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