

AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
SENIOR LAWYERS DIVISION
COMMISSION ON DOMESTIC VIOLENCE
COMMISSION ON LAW AND AGING
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges federal, state, local, tribal
2 and territorial governments and their prosecutors to vigorously prosecute cases of elder
3 abuse, neglect, and financial exploitation.

4
5 FURTHER RESOLVED, That the American Bar Association urges federal, state,
6 tribal, local, and territorial governments:

- 7
8 1. to create, whenever practical, special elder abuse units within the prosecutor's
9 office or designate a specially trained prosecutor to handle elder abuse cases;
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- 11 2. to provide training of prosecutors whenever practical on an individual basis in the
12 identification, investigation, and prosecution of elder abuse, neglect, and financial
13 exploitation and supports the formation of a National Center for the Prosecution
14 of Elder Abuse, Neglect, and Exploitation;
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- 16 3. to ensure that the victim assistance/services program within the staffing structure
17 of their offices develop policies, procedures and funding for providing specialized
18 victim services to the elder population to address the unique needs of elder abuse
19 victims;
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- 21 4. to adopt a multidisciplinary team approach to prosecuting elder abuse cases
22 including individuals and agencies from the medical and financial fields, public
23 health, service providers and law enforcement as appropriate, in a team effort to
24 investigate, prevent, and prosecute elder abuse crimes with prosecutors taking the
25 leadership role on these teams;
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- 27 5. to support the prosecutor's role in forming and encouraging the growth of
28 community-based and professional organizations that are interested in the issue of
29 elder abuse prevention and the use of all available resources by prosecutors to
30 educate the public about elder abuse, specifically, the warning signs and how to
31 become more involved in reporting and preventing abuse, and assisting victims of
32 abuse;
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- 34 6. to review current criminal statutes dealing specifically with the physical abuse,
35 sexual assault, neglect and financial exploitation of elders and assess their ability
36 to meet the needs of elder victims and the types of crimes committed against
37 them;
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- 39 7. to fund and support public and professional education about elder abuse,
40 including the laws regarding and procedures for reporting suspected elder abuse
41 to appropriate government agencies, including adult protective services and law
42 enforcement; and
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- 44 8. to develop special procedures and evidentiary rules where necessary to meet the
45 needs of elder abuse victims.-
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REPORT

I. Scope of the Problem

The elder population – those 65 and older – is increasing dramatically, both in absolute numbers and as a percentage of the population. In 2005, the elder population constituted 12.4 percent of the population, or approximately 1 in 8 Americans.¹ This represents a threefold increase from 1900, when those 65 and over constituted just 4.1 percent of the population.² This population is projected to increase to about 20 percent of the population by 2020.³

The increase in the percentage of persons age 85 and older has been particularly dramatic. This number of people 85 and over in 2005 was 82 times larger than that same group in 1900.⁴ This group is projected to increase from 5.1 million in 2005 to 6.1 million in 2010 to 7.3 million in 2020.⁵

The percentage of the 65 and older population facing elder abuse⁶ neglect⁷ and/or financial exploitation is difficult to measure for a number of reasons. States vary significantly in their statutory definitions of elder abuse and neglect and in the extent of their record keeping.⁸

Further complicating matters is the fact that many states have one set of statutes and reporting, and recording mechanisms for abuse that takes place in institutional settings, such as nursing homes, and another for abuse that takes place in domestic settings. Moreover, many state Adult Protective Service Agencies investigate abuse and neglect of both the elderly (60+) and non-

¹ A Profile of Older Americans, 2006, Administration on Aging, available at http://www.aoa.gov/prof/statistics/profile/2006/2_pf.asp

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ The National Center on Elder Abuse defines "physical abuse" as "the use of physical force that may result in bodily injury, physical pain, or impairment." "Sexual abuse" is defined as "non-consensual sexual contact of any kind with an elderly person." "Psychological abuse" is defined as "the infliction of anguish, pain, or distress through verbal or nonverbal acts." "The Basics, What is Elder Abuse," The National Center on Elder Abuse available at www.elderabusecenter.org.

⁷ The National Center on Elder Abuse defines "neglect" as "the refusal or failure to fulfill any part of a person's obligations or duties to an elder. Neglect may also include failure of a person who has fiduciary responsibilities to provide care for an elder or the failure on the part of an in-home service provider to provide necessary care. Neglect typically means the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to an elder." "The Basics, What is Elder Abuse,"

The National Center on Elder Abuse available at <http://www.elderabusecenter.org>. Not all neglect may constitute criminal activity. The National Center on Elder Abuse defines "financial exploitation" as "the illegal or improper use of an elder's funds, property, or assets." "The Basics, What is Elder Abuse," The National Center on Elder Abuse available at <http://www.elderabusecenter.org>. (This resolution does not contemplate criminal charges for self neglect.)

⁸ Id.

elderly adults with disabilities and do not differentiate between the two groups in their record keeping.⁹

It is also commonly believed that elder abuse is greatly underreported.¹⁰ However, estimates of the extent of underreporting vary significantly. One study estimates that only 1 in 6 cases of elder abuse, neglect, exploitation, or self-neglect taking place in domestic settings are reported.¹¹ Reporting of financial exploitation may be as infrequent as 1 in 25 cases.¹²

Evidence indicates rates of elder abuse reporting, investigation, and substantiation is increasing.¹³ The 2004 survey of state adult protective service agencies found the following from its 2000 survey:

- a 19.7 percent increase in reporting of elder and vulnerable adult abuse.
- a 16.3 percent increase in the number of reports investigated.
- a 15.6 percent increase in the number of reports substantiated.

As noted above, elder abuse can take place in the community, in domestic settings or in institutional settings.¹⁴ The National Center on Elder Abuse lists seven types of abuse that may occur in any of the settings:

- Physical Abuse
- Sexual abuse
- Emotional or psychological abuse
- Neglect
- Abandonment
- Financial or material exploitation
- Self-neglect¹⁵

Abuse against elder victims comes in a wide variety of forms and is committed by a wide variety of perpetrators including strangers and caretakers, but most often family members.¹⁶ Also, there are crimes that do not fit easily into the listed groups.¹⁷ In over 90 percent of cases where the perpetrator is known to the victim, he or she is a family member.¹⁸ In two thirds of these cases,

⁹ 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older, "The National Committee for the Prevention of Elder Abuse and The National Adult Protective Services Association", prepared for The National Center on Elder Abuse, p. 9.

¹⁰ <http://www.elderabusecenter.org/pdf/publication/FinalStatistics050331.pdf>

¹¹ "National Elder Abuse Incidence Study." National Center on Elder Abuse at American Public Human Services Association: Washington, DC, 1998.

¹² Wasik, John F. 2000. "The Fleecing of America's Elderly," Consumers Digest, March/April.

¹³ 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older, The National Committee for the Prevention of Elder Abuse and The National Adult Protective Services Association, prepared for The National Center on Elder Abuse, p. 14.

¹⁴ "Elder Abuse and the Prosecutor's Office," National District Attorneys Association Official Policy Position, page 7, Adopted March 2003.

¹⁵ Id.

¹⁶ Id. at 8.

¹⁷ Id.

¹⁸ The National Elder Abuse Incident Study: Final Report Sept. 1998, available at http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/ABuseReport_Full.pdf

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the perpetrators are adult children or spouses.¹⁹ Because of the family relationship, these cases present all of the challenges that are found in domestic violence and child abuse cases. Victims may be reluctant to acknowledge that a loved one is abusing them and even more reluctant to testify against a family member. This reluctance may be due to one or more of the following:

- Concern for the perpetrator's future if he or she is criminally prosecuted or even charged;
- Fear of retaliation by the perpetrator or other family members;
- Shame that this should occur within the victim's family;
- A desire to continue to hide the perpetrator's drug and/or mental health problems;
- Fear that by admitting the abuse, the victim's competence or even sanity will be questioned; and
- Concern that prosecution of the perpetrator will lead to the victim's placement in a nursing home.

This reluctance leads to underreporting of offenses and hinders the prosecution of elder abuse.

II. Improving Prosecutorial Handling of Elder Abuse Cases

A. The problem faced by the prosecutor's office.

In order to improve the prosecution of elder abuse it is first important to identify what is seen as the current problem. Adult Protective Services workers identified prosecution as one of the top ten services provided by the criminal justice profession in elder abuse cases.²⁰ Nonetheless, these workers stated that prosecution is the most difficult service to obtain due to "lack of interest or cooperation from prosecutors in bringing cases of elder abuse to court." In an effort to further understand barriers to prosecution, the American Prosecutors Research Institute (APRI), which now operates as the Research and Development Division of the National District Attorneys Association (NDAA), interviewed elder abuse prosecutors and identified the following problems:

The priorities in a prosecutor's office can change from elder abuse one day to gangs and drugs the next.

Training of the prosecutors is spotty at best. The training has to be ongoing and reflect the needs of the current staff in the positions. Additionally, a lack of training is a problem among law enforcement and judges that also deal with these cases.

Prosecutors will only take cases that they believe will result in a conviction. These cases present complex issues and can be difficult to prove.

There is a lack of public education or public outreach on the topic from most prosecution offices.

¹⁹ Id

²⁰ "Protecting America's Senior Citizens: What Local Prosecutor's are Doing to Fight Elder Abuse", American Prosecutor's Research Institute; Special Topic Series, pg. 4, September 2003.

There are systemic problems in the interplay between prosecutors, law enforcement, APS, nursing homes, and the roles each is to play.²¹

The need to address these issues has not fallen on deaf ears. Prosecutors from across the country have addressed these issues. The same 1993 APRI study also identified certain positive and negative aspects of the prosecutors' response to elder abuse:

Almost 60 percent of local prosecutors' offices engage in public education and prevention activities regarding elder abuse.²²

One-third of local prosecutors report offering specialized training (e.g., for law enforcement, APS, medical personnel) on how to handle elder abuse cases.²³

G. The solution: Special Elder Abuse Units or Special Prosecutors

In order to address these deficiencies the NDAA recommends the creation of a special unit that is solely dedicated to the prosecution of elder abuse when practicable. The need for a separate, specially trained prosecutorial unit has been recognized in domestic violence and child abuse cases.²⁴ Due to the special relationship between victim and perpetrator and their emotional, financial and psychological interdependence, victims of domestic violence and child abuse are more reluctant to seek help and testify. These same arguments apply to elder abuse cases. The abuser, who might be the primary caregiver of the victim, may be the only thing that is preventing nursing home placement for an elder victim. Also, the elder victim may suffer from diminished decision making capacity due to dementia and other medical and non-medical maladies. These factors may result in elder victims being incapable of testifying at trial.

Experts on elder abuse recognize that it is not always feasible to have a distinct elder abuse unit, especially in smaller jurisdictions.²⁵ APRI's research indicates that if a separate unit is not feasible then it is necessary to have staff dedicated to elder abuse cases even if they have other duties.²⁶ This staff member should be a prosecutor and trained in the area of elder abuse and be required to attend trainings in the subject matter once a year.²⁷ Additionally, in order to prevent re-victimization it should be office policy to use vertical prosecution, the process by which the same prosecutor handles the case from the beginning to the end, in cases of elder abuse.²⁸ In some

²¹ Id.

²² Id. at 27.

²³ Id.

²⁴ "National District Attorneys Association Policy Positions on Domestic Violence", Adopted October 23, 2004 (Monterey, CA), 2004.06.FAL, available at http://www.ndaa.org/pdf/domestic_violence_policy_oct_23_2004.pdf.

²⁵ Elder Abuse and the Prosecutor's Office," National District Attorneys Association Official Policy Position, page 5-7, Adopted March 2003.

²⁶ Id.

²⁷ Id.

²⁸ "Protecting America's Senior Citizens: What Local Prosecutors Are Doing to Fight Elder Abuse", American Prosecutors Research Institute Special Topics Series, p. 11, September 2003.

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cases, this prosecutor may be located within other units, such as Family Violence or Special Victims. But it is still the case that there should be a specially trained prosecutor who handles all the elder abuse cases.²⁹

In addition to having one or more prosecutors dedicated to elder abuse cases; it is also recommended that there be an in house investigator and victim's advocates³⁰ who also receive special training in the area of elder abuse.³¹ It is important to remember that any investigator from a prosecution office should not be a substitute for a law enforcement officer, but instead should act in conjunction with law enforcement officers, who also would be trained in the area of elder abuse.³²

H. Training

Training is essential for prosecutors to be able to identify the sources of a victim's reluctance and overcome them. Many cases of abuse and neglect take place behind closed doors and do not leave visible signs on the victim. In these cases, the victim's cooperation is critical to successful prosecution. The complexity of elder abuse requires training in two different categories. The first is training as to the types of crimes that are targeted at elders. The second category is dealing with the possible special needs of the elder victim.³³

1. Crimes committed against the elderly.

Physical abuse, sexual abuse, emotional or psychological abuse, neglect, abandonment, and financial exploitation are crimes that occur against the elderly because of their vulnerability in the domestic, community or institutional settings. Additionally, there are crimes that occur against seniors that do not necessarily take place because of where the elder is located but because of his age, vulnerability, and willingness to trust others.³⁴ These crimes may include residential burglary, home invasion, armed and unarmed robberies, muggings, purse snatching and home repair scams.³⁵ Elderly victims are also susceptible to identity theft and internet crimes. These crimes are not unique to seniors but seniors are more susceptible to them because of age, and willingness to trust others.

The crimes of physical abuse, sexual abuse and neglect are especially complicated when victims are elderly. Often prosecution of elder abuse cases requires the assistance of forensic experts familiar with issues peculiar to these cases.³⁶ Elder abuse also presents a unique problem to the

²⁹ *Id.*

³⁰ "Elder Abuse and the Prosecutor's Office," National District Attorneys Association Official Policy Position, page 6 Adopted March 2003.

³¹ *Id.*

³² *Id.*

³³ See Boland, et.al., "The Effective Prosecutor: Assisting Crime Victims with Special Needs." The Prosecutor's Deskbook (APRI 2001) (noting that the impact of crime on elder victims is great and may be compounded by the loss of supportive friends and family members who have died or may have moved away).

³⁴ *Id.* at 8.

³⁵ *Id.*

³⁶ *Id.* at 9.

medical field requiring physicians that are knowledgeable about both geriatrics and abuse.³⁷ Financial exploitation cases have become increasingly complex and include:

- Investment scams;
- Telemarketing fraud;
- Mail fraud;
- Home improvement scams;
- Identity fraud;
- Credit card fraud;
- Forgery;
- Work at home scams;
- Magazine sales;
- Prizes and sweepstakes scams;
- Medicare fraud; and

Abuse and misuse of powers of attorney, trust, guardianship and conservatorships and real estate/mortgage fraud (predatory lending).³⁸

In these cases, prosecutors will need to consult a host of professionals in order to interpret financial records and documents and understand accounting statements.³⁹ Like the medical doctors these experts should be consulted prior to placing charges against a perpetrator. It would increase the chance of successful prosecution if prosecutors could have financial and medical experts on hand to discuss relevant issues. This could be accomplished by the creation of a multi-disciplinary team as discussed below.

1. The elder victim.

One challenge is that victims of elder abuse may suffer from some degree of cognitive impairment. While Alzheimer's and cerebral vascular incidents are the most common causes of dementia in the elderly, there are over 200 possible causes of dementia, including alcoholism, diabetes, and drug interactions. Identifying and understanding the source of a victim's dementia and degree of cognitive impairment is critical to working with victims of elder abuse. In some cases, treatment may improve cognitive ability, while in others, there may be ways of working with the victim to maximize their cognitive ability. For instance, some Alzheimer's patients suffer from "sundowner's syndrome," a decline in cognitive capacity that is more pronounced later in the day. In these cases, something as simple as interviewing the victim in the morning

³⁷ "Protecting America's Senior Citizens: What Local Prosecutors Are Doing to Fight Elder Abuse", American Prosecutors Research Institute Special Topics Series, p. 29, September 2003.

³⁸ "Elder Abuse and the Prosecutor's Office," National District Attorneys Association Official Policy Position, page 8, footnote 28, referencing: "Hang Up On Fraud," SAFE Seminar materials sponsored by State of Delaware, Department of Justice, Adopted March 2003. *See also* "The Effective Prosecutor" note 36, *supra*, noting that the losses associated with fraud and financial abuse crimes may cause the victim to be unable to maintain current lifestyle, in some cases cause the victim to lose his or her independence. For example, for a victim on a fixed income, even a small amount of money taken may cause the victim to have to go without food, medication or other necessities.

³⁹ *Id.*

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may assist the victim in recounting the incident. It is also imperative that prosecutors, investigators, and victim's advocates be able to differentiate between cognitive impairment and hearing and speech impairments.

In addition to cognitive deficits, elderly victims may face health problems that interfere with their ability to participate in the prosecution.

These health problems and the medications prescribed for elder victims may make it difficult for them to travel to prosecutors offices, remain alert for long periods of time, and recall incidents critical to their testimony. Further complicating matters is the likelihood that the stress of the prosecution may exacerbate pre-existing health problems. Prosecutors, investigators, and advocates must be trained in identifying possible health problems and work with the victim and health care providers to understand and accommodate health problems.

It is important to use an evidence-based prosecution to overcome the possible deficiencies of the elder victim. Law enforcement should be instructed to take pictures of the victim's injuries, and in cases of neglect, to take pictures of the victim's living conditions. Additionally, it may be advisable to video tape the elder victim's statement in order refresh the victim's memory (or admit into evidence at a criminal trial as an exception to the hearsay rule in certain states). Additional suggestions include conducting the interview in a place where victim feels safe and outside the presence of the offender. Furthermore, the victim should be allowed to speak for himself/herself.⁴⁰

M. Multidisciplinary Team Approach to Prosecution

There are a host of medical, legal, and social service professionals available to assist victims of elder abuse. Each can play a vital role in assisting with the detection, investigation, and prosecution of the case. The victims may benefit from services to help them maintain their physical health, emotional well being and financial stability throughout the prosecution. The multi-disciplinary team (MDT) approach enables professionals to communicate with one another and draw on each other's unique training and expertise. The MDT approach has been used in child abuse cases, drug prosecutions, and the prevention of auto theft. A MDT allows all of its members to have access to experts in a variety of fields. Additionally, the MDT provides a forum in which a prosecutor can interact with and learn from experts across various disciplines. MDTs also allow for the sharing of information about new development in the field or about particular cases. Most currently operating MDTs have monthly meetings in order to discuss the cases that are pending.

The NDAA recommends that prosecutors take a leadership role in the creation and coordination of multidisciplinary teams. The NDAA proposes that the following professionals and agencies be considered for inclusion in the multi-disciplinary team:

Prosecutors;

⁴⁰ The suggestions for this paragraph come from "Model Domestic Violence Protocol for Law Enforcement, Prosecution and the Judiciary," Domestic Violence Training and Curriculum Task Force, Illinois Criminal Justice Information Authority, (publication pending).

Law enforcement agencies;

Adult protective services workers and members of social service agencies that provide resources and referrals to the senior population;

Members of the medical/health care profession including:

- Physicians (geriatricians, family physicians, internists);
- Emergency physicians, forensic pathologists, medical examiners and psychiatrists;
- Nurses and nurses' aides (including geriatric nurse practitioners and Sexual Abuse Nurse Examiners (SANE) nurses);
- Public health and safety workers
- Other appropriate professionals (including emergency medical services professionals);
- Therapists (including creative arts, occupational, speech and physical therapists); and
- Mental health providers for elders;

Individuals who work with the public, including:

- Bank personnel,
- Utility workers,
- Providers of home-delivered meals;
- Real estate professionals, clergy, and
- AARP representatives and others who may work with elders on a routine basis;

Guardians ad litem, groups providing legal services or pro bono attorneys;

Long Term Care Ombudsmen and state nursing home surveyors; and

Financial experts, including auditors, accountants, financial institution personnel, document examiners, and stockbrokers.⁴¹

The creation of a multidisciplinary team will help ensure that an offender is held accountable the safety of the victim is protected, and that the special needs of the victim are met.⁴² It also allows for several agencies to combine their resources in order to achieve a common goal of preventing or treating elder abuse. MDTs also facilitate early involvement in the elder abuse case. APRI's national survey determined that an early or intensive contact with the victim was the strategy prosecutors reported most frequently.⁴³ Early involvement is important because it enables:

Prosecutors more time to gain the victim's trust;

The victim more time to open up about or to describe the crime;

An opportunity to assess the victim's condition and needs; and

An earlier opportunity to preserve evidence.⁴⁴

E. Improving Victim Assistance Services

⁴¹ Id. at 14.

⁴² Id.

⁴³ APRI at 19.

⁴⁴ Id.

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Increased attention to elder abuse victims will also ensure that the rights of these victims are afforded to them and they are able to obtain the services they need. For example, these victims may need special transportation, larger type materials, hearing assistance and have other requirements that need to be met to assist them to understand and assert their rights. APRI's 2003 study found that less than a quarter of prosecutors' offices had victim advocates.⁴⁵ However, out of those advocates, 90 percent had special training and expertise in elder abuse.⁴⁶ Nonetheless, elder abuse experts reported that victim advocates are often not adequately trained in working with elder abuse victims.⁴⁷

Properly trained victim advocates can enhance the ability of prosecutors' offices to get involved early and facilitate a multidisciplinary approach. By establishing a close rapport with victims and their non-offending family members and linking them to vital services in the community, victim advocates help ensure that the unique needs of the elderly victim do not go unmet during the prosecution. The NDAA provides that victim's services may include the following:

- Assistance in obtaining the return of property held in evidence;
- Assistance in obtaining restitution orders at sentencing;
- Assistance with transportation and lodging arrangements for court hearings;
- Assistance in reducing the time the victim has to wait for any court appearance to a minimum;
- Assistance in reducing overall inconvenience whenever possible and appropriate (See National Prosecution Standards 26.3);
- Assistance in obtaining frequent recesses while in court for purpose of administering medications or reducing victim fatigue;
- Assistance in accessing the courthouse/courtroom;
- Assistance with vision/hearing impairments;
- Assistance with medical equipment in the courtroom;
- Assistance with orientations of the criminal justice process to the extent feasible and when it is deemed appropriate by the prosecutor;
- Assistance with conferring with prosecutors about the case;
- Assistance with referrals to community services for daily living needs, therapy and civil legal counsel;
- Assistance with victim impact statement preparation; and
- Safe, comfortable waiting areas in court.⁴⁸

O. Educating the Public and Professionals About How to Identify and Intervene in Cases of Elder Abuse

Prosecutors focusing on elder abuse have unique insight into the various types of abuse perpetrated on the elderly and how they can be prevented. By educating the public about the warning signs and how to intervene in cases of abuse, prosecutors can increase the number of

⁴⁵ Id. at 21

⁴⁶ Id.

⁴⁷ Id. At 22

⁴⁸ NDAA at 10.

elder abuse cases that are brought to their attention and enhance their ability to intervene early on. Public education efforts can include brochures, radio and television advertisements, and lectures at senior centers, residential communities, and nursing homes.⁴⁹ Prosecutors should also be encouraged to participate in task forces, conferences, and seminars on elder abuse.⁵⁰

Prosecutors should be encouraged to train other professionals on how to assist elder abuse victims. Mandatory reporters need training on their obligations under state mandatory reporting laws.⁵¹ First responders such as fire personnel, emergency medical technicians and adult protective services workers should be trained on how to identify and respond to elder abuse. Financial services workers should be trained in how to identify and report elder abuse, regardless of whether reporting is mandated by state law.

III. Improving Law and Procedure

A. Updating State Criminal Statutes

There is a need to review and update existing state criminal statutes dealing with physical abuse, sexual assault, neglect and financial exploitation of elders. In some states, there is a need for new legislation creating separate criminal offenses for physical abuse, sexual assault, neglect, and financial exploitation of the elderly. In states where elder abuse is incorporated into the general criminal statutes, penalties should be enhanced on the basis that elders may be considered as especially vulnerable and thus the age or status of the victim becomes an aggravating factor. In addition, there is a need for laws that create a victims' compensation fund and require restitution in cases of financial exploitation.

B. Developing Special Trial Procedures and Evidentiary Rules

A host of special trial procedures and evidentiary rules have been developed in domestic violence and child abuse cases. Given the frail condition of many elder abuse victims and their relationship to the perpetrator, these procedures and rules should also be applicable in elder abuse cases. Additionally, the witness may be unavailable because of death, disability, memory loss or illness. Examples of special procedures and rules include:

- Allowing the victim to testify through closed circuit television;
- Admission into evidence of an elder's videotaped deposition and statements to police;
- Admission of evidence of prior acts of abuse to show propensity for committing elder abuse;

IV. Conclusion

⁴⁹ Id. At 16.

⁵⁰ Id.

⁵¹ Id.

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There is much to be done to prevent, prosecute and to alleviate the pain of elder abuse. Prosecutors can form specialized units that focus entirely on elder abuse. This specialized unit, in the perfect world, would consist of at least one prosecutor, one victim advocate and one investigator who are trained and remain current on the topic of elder abuse. However, the feasibility of this is recognized and in jurisdictions that cannot support an entire unit should have a dedicated and trained prosecutor should be designated. Additionally, no matter if it is a unit or a lone prosecutor, the office should assign the same prosecutor from the inception of the case through sentencing. This staff needs to be properly trained in the area of elder abuse. Training should include identifying the crimes that most affect elders and the dealing with elder victims. The elder victim is very unique, and may have many special needs.

Elder abuse is complex. In order to prosecute such crimes effectively the prosecutor's office needs to employ external resources. For this reason, the creation of a multi-disciplinary team should be assembled to aid in putting a stop to elder abuse. This goal does not fully rest in the hands of the prosecutor's office. The legislature needs to be involved to create or change laws to enhance punishment for elder abuse and clarify existing laws that deal with elder abuse.

Consistent with Goal III of the ABA's mission, to provide ongoing leadership in the law to serve the changing needs of our society, the ABA has long recognized the need for special consideration of elder abuse cases. The ABA's generalized recommendations related to elder abuse and state judicial practices were adopted in August 2002, August 1996 and August 1991. Other related recommendations concerning domestic violence and child abuse were adopted in February and August 1978, August 1981, August 1987, August 1995 (two recommendations), February 1996, August 1998, February 1997 (2 recommendations) and August 2000. The ABA has taken a lead in these issues and should continue to do so in encouraging the effective prosecution of elder abuse.

Respectfully submitted,

Stephen J. Saltzburg
Chair, Section of Criminal Justice
February 2008

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: American Bar Association Section of Criminal Justice

Submitted By: Stephen Saltzburg, Chair, Section of Criminal Justice

1. Summary of Recommendation(s).

The Recommendation calls for federal, state, local, tribal, and territorial governments and their prosecutors to vigorously prosecute cases of elder abuse, neglect, and financial exploitation by the creation of special elder abuse units within the prosecutor's office or by the designation of a specially trained prosecutor to handle elder abuse cases and by ensuring that the victim assistance/services program within the staffing structure of their offices develop policies, procedures and funding for providing specialized victim services to the elder population due to the unique needs of elder abuse victims and the many types of abuse inflicted on them.

2. Approval by Submitting Entity.

The recommendation was approved by the Criminal Justice Section Council at its Nov. 3, 2007 meeting.

3. Has this or a similar recommendation been submitted to the House or Board previously?

The ABA's generalized recommendations related to elder abuse and state judicial practices were adopted in August 2002, August 1996 and August 1991. Other related recommendations concerning domestic violence and child abuse were adopted in February and August 1978, August 1981, August 1987, August 1995 (two recommendations), February 1996, August 1998, February 1997 (2 recommendations) and August 2000.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

This recommendation strengthens previous ABA policy in regard to protecting the elderly from crime by calling for the vigorous enforcement of crimes against the elderly. The resolution specifies actions to be taken to better prepare prosecutors to bring such enforcement actions such as training, the creation of elder abuse enforcement units, a team approach and public education. Additionally, this recommendation fits within Goal III of the Association's mission, to provide ongoing leadership in the law to serve the changing needs of our society.

5. What urgency exists which requires action at this meeting of the House?

Elder abuse – be it physically, mentally or financially – is alarming problem in this country, and special units within the prosecutor's office need to be created to address the issue.

6. Status of Legislation. (If applicable.)
N.A.
7. Cost to the Association. (Both direct and indirect costs.)
The recommendation's adoption would not result in direct cost to the Association. The only anticipated costs would be indirect costs that might be attributable to lobbying to have the recommendation adopted or implemented at the state and federal levels. These indirect costs cannot be estimated, but should be negligible since lobbying efforts would be conducted by existing staff members who already are budgeted to lobby Association policies.
8. Disclosure of Interest. (If applicable.)
No known conflict of interest exists.
9. Referrals.
Concurrently with submission of this report to the ABA Policy Administration Office for calendaring on the February 2008 House of Delegates agenda, it is being circulated to the following:

Sections, Divisions and Forums:

All Sections and Divisions

The Recommendation has been endorsed by the Senior Lawyers Division, the Commission on Domestic Violence and the Commission on Law and Aging.

10. Contact Person. (Prior to the meeting.)
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EXECUTIVE SUMMARY**A. Summary of Recommendation.**

The Recommendation calls for federal, state, local, tribal and territorial governments and their prosecutors to vigorously prosecute cases of elder abuse, neglect, and financial exploitation by the creation of special elder abuse units within the prosecutor's office or by the designation of a specially trained prosecutor to handle elder abuse cases and by ensuring that the victim assistance/services program within the staffing structure of their offices develop policies, procedures and funding for providing specialized victim services to the elder population due to the unique needs of elder abuse victims and the many types of abuse inflicted on them.

B. Issue Recommendation Addresses.

The need for vigorous prosecution of elder abuse cases, neglect, and financial exploitation in prosecutor's offices nationwide

C. How Proposed Policy Will Address the Issue.

Create special elder abuse units within the prosecutor's office, provide training of prosecutors – whenever practical on an individual basis – in the identification, investigation, and prosecution of elder abuse. Additionally, support the prosecutor's role in forming and encouraging the growth of community-based and professional organizations that are interested in the issue of elder abuse prevention.

D. Minority Views or Opposition.

No opposition to this recommendation is known to exist at this time.