

Senator John Breaux: The Elder Justice Proposal of 2002

Introduction

Nearly quarter of a century has passed since the first of many congressional hearings on elder abuse, yet action to effectively address the problem of elder abuse, neglect and exploitation remains elusive.

Elder abuse is a problem with no demographic boundaries. It occurs in poor, middle and upper class households and in cities, suburbs, rural areas and in institutions. Some abusers are criminals who prey on the elderly; others are caregivers or relatives pushed to the brink because they are overwhelmed. Some are institutions that do not provide residents the care they need. Some are scam-artists who enrich themselves at the expense of seniors' well being.

Some studies report that four to six percent of America's seniors may at some time become victims of some form of abuse or neglect. Others estimate that there are 500,000 to five million potential victims every year. The research is inconclusive -- we do not yet know just how many people are victimized. But experts agree that we've only seen the tip of the iceberg -- an estimated 84% of all cases are never even reported. Despite the dearth of research, we do know one thing -- that elder abuse and neglect shorten the victim's life and often trigger a downward spiral, "tipping over" an otherwise productive, self-sufficient older person's life.

Many states have acted generally to legislate elder abuse protection statutes. Moreover, all states support adult protective services programs. Although Congress recognized the growing crisis by providing assistance to APS through the Social Services Block Grant (SSBG), few of those funds go to protecting elders. In fact, only \$153.5 million is spent by the federal government on programs addressing elder abuse, neglect, and exploitation, with funds spread thinly across the myriad agencies and programs responsible for protecting older Americans. In sharp contrast, the federal government spends \$520 million on programs combating violence against women and \$6.7 billion on child abuse prevention efforts. Less than two percent of the total federal funds for abuse prevention is spent on elder abuse. The vast majority is spent on child abuse. The majority of the states -- hard-pressed by current budgetary constraints -- have failed to finance efforts to curb the growing incidence of elder abuse.

The 1960's was the decade when America awoke to child abuse, resulting in the Child Abuse Prevention and Treatment Act of 1974. In the 1970's, America began to awake to domestic violence, resulting in the Violence against Women Act of 1994. The 1980's was the decade of the battered parent, yet federal legislation is still wanting. The need is all the more

urgent in light of the demographics facing our country. Every investigation, congressional report, and congressional hearing addressing elder abuse, neglect and exploitation reflects that this disgraceful phenomenon is increasing, that it is widespread, and that the states and the Congress should act now.

Armed with the knowledge that millions of families are touched by 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 ensure that these crimes are never forgotten again. Currently, not one single federal employee works full-time on elder abuse, neglect and exploitation issues.

The Elder Justice Proposal of 2002 is the first comprehensive legislation ever to address elder abuse in the United States. A sampling of the provisions in the Elder Justice Proposal: include:

- Prevention*** - 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.
- Detection*** - It creates forensic centers and develops expertise to enhance detection of the problem.
- Treatment*** - It funds efforts to find better ways of mitigating the devastating consequences of elder abuse and meet complex needs of victims.
- Collaboration*** - 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 multi-disciplinary response teams to educate at every level and truly tackle elder abuse.
- Prosecution*** - It assists law enforcement and prosecutors to ensure that those who abuse our nation's frail elderly will be held accountable, wherever the crime occurs.
- Consumers*** - 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.

The time is now to enact the Elder Justice Proposal of 2002.

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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 includes representatives of the following components 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, a social service and a 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, neglect 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 about \$4 million. Similarly, funding under the Social Services Block Grant, the primary federal funding source for Adult Protective Services, 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 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 coordination – department-wide – 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, from among individuals who have 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 Office of Justice Programs as the directors of other offices headed by Presidential appointees within the Office of Justice Programs. The Director shall develop objectives, priorities, policy, and a long-term plan, and implement overall policy and a strategy to carry out such a plan, for elder justice programs, and activities, relating to prevention, diversion, training, treatment, evaluation, research and improvement of 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 leadership offices -- the Office of the Attorney General, the 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 issues. The Special Counsel shall be responsible for intra-agency coordination, including the Office of Elder Justice, other Offices of OJP with involvement in elder justice issues, litigating divisions with cases relating to elder justice matters, the Executive Office of United States Attorneys and such other offices, divisions, or components as are deemed appropriate by the Attorney General.

Background and Justification – Elder abuse, neglect and exploitation is a law enforcement as well as 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 draws a line in the sand. It says that as a nation, there is certain conduct that we 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 Office of Justice Programs, it also pursues a multitude of projects relating to the administration of justice. OJP currently makes a variety of grants, has sponsored training and symposia and pursues 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, administrative, 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, let alone in any other federal agency, to address law enforcement and victim assistance concerns relating to those at the other end of the age spectrum, whose numbers are growing and whose needs are equally complex. The rapidly growing number of older people makes it imperative for these executive branch agencies with a role in elder justice issues 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 DOJ, HHS, other relevant federal agencies, states, communities, and private and not-for-profit entities regarding elder abuse, neglect and exploitation and crimes against 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, and crimes against the elderly.

The Elder Justice Coordinating Council shall schedule a minimum of two events a year, including one annual summit. The principals shall attend the Elder Justice Summit to receive a report on the “state of elder justice,” including federal, state, community and private efforts, 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 it deems it to be necessary. The working meeting should be an opportunity for an in-depth analysis of the numerous phenomena that make up elder abuse, neglect and exploitation. In addition, the working meeting(s) should permit participants to highlight promising practices, exchange information about how they have addressed challenges, and identify needs and priorities. 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 describes 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 position to spearhead coordinated efforts to prevent, intervene in, 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 elder justice issues faced by those entities as well. Given the distinct but interrelated nature of the various phenomena making up elder abuse, neglect, and exploitation, the Council may consider formation of various interest groups, which 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 adults and the elderly nationwide. Duties of this office shall include the annual collection and reporting of national APS data relating to abuse, exploitation and neglect of older persons and vulnerable adults, providing training, developing best practices in carrying out protective services and conducting related research, providing technical assistance, participating in the intra-agency Steering Committee, and coordinating with the Office of Elder Justice in 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 20 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 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 50 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, these programs are chronically underfunded and their purpose and scope 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 Social Security Block Grant (SSBG) funding allotted for victims of abuse actually reaches the elderly, while 93% goes to child abuse and 6% to domestic violence victims.

Development of meaningful measurements of protective services outcomes also 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 also 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, 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, in turn, 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 in 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 and shall 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 on the components of such Resource Center. It also shall establish a toll free number for information and referrals.

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

2. *National Elder Justice Library of Training, Technical Assistance, and Promising Practices Materials*

In addition, the Resource Center will house a national library of training, technical assistance, and promising practices materials, as well as web-based index and brief description of the materials housed in that library. The library shall be a centralized repository for all types of training, technical assistance, and promising practices materials in all mediums, including brochures, video, computer based, books, pamphlets and training modules. These materials shall be available to copy to individuals and entities nationwide. In addition, the Elder Justice Library shall fund an analysis of what exists, identify what types of materials still need to be generated, and promote research into what kind of training and technical assistance works. It should fund the development of technical assistance kits for use in various settings, develop strategies for effective disseminations, including to difficult to reach populations and permit an analysis of what exists, identify what types of materials still need to be generated and promote research into what kind of training and technical assistance works. Once available materials have been collected and evaluated, a “toolbox” or “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 practices materials exists. For example there are training and “train-the-trainer” videos for use at police roll calls, to train bank tellers, or to train nurses aides. A “safe-return” training program has educated law enforcement about dementia. Many different types of brochures, pamphlets and protocols exist. There have been *ad hoc* efforts to collect information about promising practices. But there is no central location where those materials are available, and those venturing into this area often find themselves “reinventing the wheel.” This elder justice library should be based on the premise of broad general access to all types of materials. See also the 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 entity, as well as 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, health and law enforcement entities. 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 requirements exist, it is nonetheless critical to begin the process of compiling a centralized data base on elder abuse, neglect, and exploitation. This data repository will be an invaluable resource for research, training, raising public awareness, guiding public policy and other purposes.

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 in and, where appropriate, prosecuting elder abuse, neglect and exploitation. Elder abuse, neglect and exploitation is a complex area to quantify and address -- an amalgamation of numerous distinct, but overlapping phenomena. These 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; and
- self-neglect.

Each of these issues or sub-issues should be studied, alone and in relationship to other factors. Such research will enhance understanding of the phenomena, and provide important information about how best to prevent, intervene in, treat and, if appropriate, prosecute elder abuse, neglect and exploitation. In addition, there are complex human subjects protection issues in any research involving individuals with diminished capacity or where there are 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, or 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 the studies and demonstrations 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 on 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.” 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 as a victim 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 often 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 found five Centers of Excellence, specializing in elder abuse, neglect and exploitation. These centers will concentrate expertise, research, clinical practices, training and dissemination of information in one location, 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 assure that the activities of the Centers of Excellence shall be well coordinated, that priorities are developed, and that adequate procedures and mechanisms for full data sharing among the Centers of Excellence is in place, including that they have similar systems and research reporting procedures.

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 assure -- from the beginning -- that efforts nationwide, and the procedures and mechanisms, are well coordinated and provide, among other things, 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 and/or demonstration projects are needed, and may be funded through a variety of entities.

- a. *National incidence and prevalence study*

The National Institute on Aging (NIA) shall providing the grant 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 validated screening tools

HHS shall provide funding to develop uniform validated 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 screening tools for elders and short and long forms for 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, but the fact that there are so many different instruments alone presents challenges, particularly in data collection. This provision authorizes a grant to develop uniform, validated 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 which among them are effective 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 includes such core prevention components. Many communities have implemented efforts to increase senior safety and decrease isolation.

a. 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 APS, ombudsmen, families, health care providers and others still must respond to allegations of abuse, neglect and exploitation as well as possible. It is critical that those efforts are methodically studied, so that the most successful among them 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 Excellence 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 test 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 in elders. Absent forensic evidence, it is difficult to prosecute a criminal case. Forty years ago, child abuse was still considered to be a social services problem and not a law enforcement problem. If there is no detection or reporting, there can be no prosecution. Just as it was said that children bruise and fall often when considering child abuse, it is often said that frail elderly bruise and are injured easily. We simply do not yet know what patterns in bruising or what types of fractures indicate that someone has been abused or what patterns of decubitus ulcers or malnutrition 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 the subject of an abuse, neglect or exploitation claim.

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, and rendering it important to recognize the sometimes subtle signs or changes that may follow from abuse, such as sudden withdrawal. Because these issues are not yet part of the national consciousness, many people consider it

inconceivable, for example, that an older person would be the victim of a sexual assault or that adult children would abuse their parents. Such assumptions compound problems in detection, and lead to delayed, if any, assessment.

Many health and social services professionals report that much more is learned about potentially abusive, neglectful or exploitative aspects of an elder's living arrangement with a house call – a visit to where the individual lives. Thus, the utility of mobile forensic units should be a pilot-tested to ascertain if it is a better mechanism than other models for gathering forensic information.

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 both at the fellowship level, as well as to experienced practitioners who wish to cross-specialize mid-career.

Programs shall be developed to promote career development of eligible individuals as forensic-trained geriatricians by providing funded fellowships. 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 have cross over expertise in pediatrics and forensic pathology, who are trained to detect signs of abuse and neglect, and who are experienced and not reluctant to intervene, report, and, if necessary, testify. Physicians without such training or expertise are often less likely to detect signs of abuse or neglect, unfamiliar with potential interventions and treatments and reluctant to begin the process of reporting and potentially 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*

Among the priorities of the forensic centers will be research to describe and disseminate forensic markers that indicate that elder abuse, neglect or exploitation may have occurred, and that additional questions should be asked or the appropriate authorities should be called.

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 evidence-based forensic markers of abuse, neglect and exploitation will assist those on the front lines,

including coroners and medical examiners, family practitioners and emergency room physicians, APS, long-term care ombudsmen, medical directors and others to detect potential problems. Development and dissemination of forensic methodologies will also assist those on the front lines 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 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, including medical, nursing and forensic evaluation, therapeutic intervention, victim support and advocacy, case review and assistance to find a new appropriate 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 victims, such as children and women 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 cognitive status may present issues. And generational and individual concerns may lead them to feel shame about revealing or talking about traumatic events. Victim advocates can be extremely helpful in assisting the victim in overcoming a traumatic event.

Among the types of assistance a victim might need, is finding a safe place to go if it no longer is safe where the victim lives. When an abused or neglected person must be taken out of an unsafe living environment to protect them, their 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 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 many communities have no 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 court-appointed advocates, legal services for older victims, public guardians, monitoring of guardianship and enhanced volunteer, faith based and not-for-profit work in prevention of elder abuse and to assist 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, assistance or otherwise have their interests represented. 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 be in need of help in attempting to retrieve assets or in stalling a foreclosure on a house. But the services and resources are not always available to provide at-risk elders the assistance they need. 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 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 with regard to addressing elder abuse, neglect and exploitation.

4. *Supporting Multi-Disciplinary Efforts*

There is widespread consensus that problems as complex and inherently 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 — A handful of 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. 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, where indicated, 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, describe similarities and differences and the impact of different procedures, team composition and other factors.

b. *State coordinating bodies*

Modeled on the federal Elder Justice Coordinating Council, and to promote coordination at the state level, 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 for coordinated efforts on specific topics. For example, the Department of Justice 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. But 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 different entities in different states and pursue various goals. For example in Louisiana, the State Working Group includes representatives from: the United States Attorneys' offices in several districts, 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 Hospitals, 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 modeled on the child abuse area. Child fatality review teams have existed for many years, examining deaths, and sometimes serious injuries of children, where the death or serious injury was unexpected or explained in an unsatisfactory manner. Elder fatality and serious injury review teams could be very helpful in assessing questionable deaths or serious injuries at the other end of the age spectrum. This is, however, a complex task for several reasons. First, people do not expect children to die. They do expect that older people will die. Thus, when a child dies without a satisfactory explanation, there is automatically an inquiry. When an old person dies, often no questions are asked regardless of the circumstances. Second, many more older people die or suffer serious injury without explanation. Another difficulty is that although relatively few children die, many older people die. Thus, any blanket policy for review by fatality review teams and/or for autopsies, 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 creating it. 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 for training of individuals from myriad disciplines about elder abuse, neglect and exploitation. Funds shall be available for beginning, intermediate and advanced training, for modules to offer during a broader curriculum or for intensive training relating to elder justice issues, for training within a discipline, as well as for 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, 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 physicians, 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, they do not know who to call if the need arises. Training grants under this statute will permit a broad range of training options – basic or specialized, concerning a single type of or an approach to elder abuse, or the whole spectrum, for one profession, or for a multi-disciplinary group of individuals, for preparing training materials or “train-the-trainer” packages.

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*

DOJ shall establish a grant to the American Prosecutor Research Institute (APRI) of the National District Attorneys Association (NDAA) to found a Center for the Prosecution of Elder Abuse, Neglect, and Exploitation. This Center shall serve a function similar to other APRIL Centers, by supporting local prosecutors nationwide to pursue cases involving elder mistreatment.

Background and Justification – APRIL’s National Center for Prosecution of Child Abuse, which has been in existence for 16 years, has been the “go-to” clearinghouse for information and support to prosecutors and allied professionals for all needs associated with prosecuting physical and 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, however, is no national resource for local prosecutors to utilize. This provision would allow APRIL to develop such a capacity.

2. *Resources for technical, investigative and victim assistance support for federal cases involving elder justice*

Resources shall be provided to DOJ to support cases relating to elder justice. This includes funds for federal prosecutors handling failure of care cases to hire nurse-investigators or other experts needed to pursue such cases. 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, DOJ shall be provided with funding to support cases redressing 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 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, institutional abuse and neglect.

4. *Community policing and other law enforcement efforts to make neighborhoods safer for older people*

DOJ shall establish grants to develop community policing and other law enforcement efforts designed to make communities safer for elders living in all settings. In addition, grants shall be provided to support special elder units, or, in rural areas with smaller police and sheriff's departments, a specially training 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 safer wherever they live will become increasingly important. There are good examples of programs all over the country. The Safe Return Program, a nationwide public-private partnership between DOJ and the Alzheimer's Association, 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. Police

departments in Illinois 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’s 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 among them are the most effective and should be replicated.

5. ***Study to determine effectiveness of law enforcement and prosecutorial efforts***

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 and to 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 aids in determining which ones 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 victims advocates, and what types of victim assistance is 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 ombudsman, APS and victim advocates, who sometimes have differing approaches. The study should evaluate how various models work, identify procedures, protocols and infrastructure that improve effective responses and provide recommendations on how to structure the arrangements, and encourage communication in different circumstances.

Background and Justification – Where potential elder abuse, neglect or exploitation is alleged, in many states APS is charged with conducting an investigation. 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 some 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 ombudsman 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 determine and make recommendations about the respective roles and responsibilities of those organizations and 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 18 and older, although in a handful states APS represents only those over age 60. State and local long-term care ombudsman (some paid, most volunteer) 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 advocacy and protection efforts, inuring to the detriment of the vulnerable adults and elders whose interests are at stake.

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 allowing geriatric training time to be considered as obligated service under the National Health Corps Loan Repayment Program -- in other words, 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. Dependency and vulnerability 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, 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 90 percent of the elder abuse in domestic and community settings is committed by someone related to the victim. This troubling statistic suggests that more needs to be done in domestic settings to reduce elder abuse, neglect and exploitation. Since 1983 the CDC has studied violence-related injuries as part of its overall research protocol in public health. CDC's method for looking at violence from a public health perspective provides a unified framework for developing relevant information and transferring that information into effective action. The National Center for Injury Prevention and Control's current studies on family and intimate violence prevention provide a model for creating programs aimed at preventing elder abuse in the home and community.

F. Identifying the Special Needs of Underserved Populations -- Rural, Racial and Ethnic Minorities and Indian Elders

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

1. Meeting the special needs of elderly Americans in rural settings

HHS and DOJ shall make grants and fund programs designed to meet the needs of older people living in rural locations, including the needs of their informal caregivers. Pilot programs shall be funded that test strategies for decreasing isolation, and addressing the needs for at-risk rural elders, including training for informal caregivers, and collaborations with local high schools and colleges to offer credit classes in visiting and working with frail elders and their caregivers. Also, funding will provide incentives for health workers to practice in rural communities, train volunteers to serve as outreach workers to train others in reaching isolated elders in rural areas and (under the auspices of the National Elder Justice Library) 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. 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 70 % of the time. Finding ways to assess reimbursement schemes, and other ways to support such informal caregiving, are 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, disease-specific education, skill training, respite and ongoing support, necessary to properly care for a frail and impaired elder in the home. 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 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 practices 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 to include in such “tool boxes.” In addition, “tool boxes” with training, technical assistance and promising practices 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 65 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*

DOJ and HHS shall provide grants to Indian Tribes to provide necessary services relating to elder abuse, neglect and exploitation, and gather the best information and best current analysis

about elder abuse among American Indians; identify 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 disseminate this information broadly throughout tribal jurisdictions and to those with a particular interest in Indian seniors, including policy makers, health and social services providers, law enforcement and researchers. 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 by 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

DOJ and HHS shall provide a grant to mount a multi-media campaign designed to raise awareness about 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, what to do if someone suspects that it may have occurred or be occurring, and what to do to prevent it.

Background and Justification — Elders are the targets of a wide variety of financial scams – perpetrated by family members, “friends” caregivers, or acquaintances. The vehicle may be sweepstakes, 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 similarly 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 abuse or neglect.

H. Model State Laws and Practices

DOJ shall fund the examination, report and recommendations regarding 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 it relates 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 homes 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, the existence of memoranda of understanding among relevant parties, providing 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 that there are needed laws or practices which would be helpful in more 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, as well. 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. The report should include recommendations to inform the efforts of other states contemplating what types of legislation to enact, and in or 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, an 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 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, at least 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 is a law that 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. Establishing legal guardianship can be expensive and time-consuming. On the other hand, 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. One state recently amended its law to increase restrictions.

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 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 receiving 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 don't require the involvement of law enforcement. But too often, serious crimes are not immediately reported to law enforcement, but instead are handled internally or solely administratively, by reporting to the state survey agency. [See "Nursing Homes: More Can Be Done to Protect Residents from Abuse," GAO Report of the General Accounting Office to the Special Committee on Aging, GAO-02-312, March 2002]. 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," – 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 \$50 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 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 conduit, and in part because few nursing homes and home health care agencies have taken advantage of this law.

HHS/OIG will coordinate all background checks for applicants, alleviating the need for

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

C. Assuring Safety of Residents when Nursing Facilities Close

Any nursing facility must provide 60 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 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 60 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 simultaneous 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 it is 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; and
- 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 75 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 as well. 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 85, there were 38 people aged 20-64. By 2050 that ratio will change dramatically -- instead of 38 to one that ratio will be 11 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 93% 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 93% 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 for 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 Institute of Medicine (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; many are volunteers. Some work for state departments of health, aging, or other government entities. Most 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 have 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 entity, law enforcement, family councils, resident representatives, CNAs, RNs and others.

I. Collaborative Efforts to Develop Consensus Around the Management of Certain Quality-related Factors

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

J. New Federal Cause of Action for Elder Abuse and Neglect

A new federal cause of action will permit 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's 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 have been determined to be 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, to advise the applicant why the proposal was not funded, and assist applicants in modifying evaluation proposals.