



STATE OF MICHIGAN
OFFICE OF SERVICES TO THE AGING
LANSING

RICK SNYDER
GOVERNOR

KARI SEDERBURG
DIRECTOR

**Testimony before the MI House Families, Children and Seniors Committee
Tuesday, February 21, 2012
Elder Abuse Legislation
Presented by: Kari Sederburg, Director
Michigan Office of Services to the Michigan**

I am here today in my role as the director of the Michigan Office of Services to the Aging (OSA), the state agency responsible for advocating on behalf of Michigan's 1.9 million persons aged 60 and older. OSA administers state and federal funds, and manages grants for aging services provided through a network of 16 Area Agencies on Aging and more than 1,200 service providers statewide.

Because of our work, which touches almost every aspect of an older adult's life, we know well the high cost of vulnerable adult abuse. These costs are not just in terms of the horrific loss of life and diminished life quality through physical and emotional abuse, but also in the loss of all resources, possessions, the home, and especially for older adults, retirement savings through financial exploitation. Add to this the cost to all Michiganders when older adult victims are forced to rely on social services in the face of financial ruin, where no such need existed before. You can see that this is a serious problem needing serious solutions.

Elder and vulnerable adult abuse is complex and includes physical, emotional, sexual, and neglect or financial abuse. Typically multiple forms of abuse and neglect are perpetrated against a victim; and tragically, the perpetrator is often someone known and trusted by the victim, such as a family member or caregiver. Research suggests that this is true in at least 70% of reported cases.

You may notice that I use the terms "elder and vulnerable adult abuse." In Michigan a vulnerable adult is defined as an individual over the age 18 who, by physical or cognitive disability or advanced age, needs assistance to manage his/her day to day life. These proposed bills apply to all vulnerable adults meeting this definition, not just older adults.

The Michigan Office of Services to the Aging (OSA) along with our partners, the Department of Human Services (DHS), the Office of the Attorney General (AG), the Michigan State Police (MSP), the Office of Finance and Insurance Regulation (OFIR), Sheriff's Departments and local law enforcement, and networks of service providers have been working to prevent, identify, investigate, and prosecute elder and vulnerable adult abuse and provide assistance to victims of elder abuse for decades.

Despite the historic lack of direct resources for elder and vulnerable adult abuse, we have worked to increase awareness and increase our ability to combat abuse in all of its forms. However, in Michigan and nationally, elder abuse prevention efforts are still in their infancy when compared to child abuse and domestic violence systems. The existence of this proposed legislation demonstrates the need for new and better tools.

Financial exploitation, often the most difficult of cases to prove in court, is increasing at an alarming rate, and is second only to self-neglect as demonstrated by Adult Protective Services cases. Financial exploitation involves misuse of the vulnerable adult's resources, often resulting in the victim needing to rely on public programs to fund needed medical and other care.

Financial abuse is perpetrated by family members and caregivers with access to a vulnerable adult's information, funds, and possessions. It is also perpetrated by guardians and conservatorships, and by aggressive agents earning high commissions for financial products inappropriate for older or vulnerable adults. It is important to note that the vast majority of caregivers, including family caregivers who provide more than 80% of mostly uncompensated care to vulnerable adults, do act in the best interest of those for whom they are caring. And the majority of guardians, conservators and financial professionals are ethical and honest. However, our current laws and policies make it extremely easy for those who - by opportunity or intent - abuse, exploit and neglect.

In Michigan an estimated 90,000 older and vulnerable adults suffer abuse, neglect, or exploitation each year. Research, including a recent New York study, documents that only a fraction of cases is reported to authorities. Conservatively speaking it is believed that only 1 in 10 cases are reported, and the number may be as high as only 1 in 25 cases for financial exploitation. Studies like this are rare. Calculating the true numbers of victims and cost of these crimes is very difficult because of shame on the part of victims to come forward and often when they do, there is no support. The fact is that what we know about elder abuse is still the tip of the iceberg. It largely remains an unrecognized and unreported social problem. And as the population of people aged 60 and over increases, and with those aged 85 and beyond growing the fastest, the problem of elder abuse will only continue to increase.

While we still have a great deal to learn about elder and vulnerable adult abuse, we do know a few things about the economic cost. Recent studies by Met Life and the Investor Protection Trust estimate that more than \$2.5 billion nationally is lost each year to financial abuse, fraud, and exploitation of older adults. A recent Utah study, now considered a best practice to be replicated in every state, shows that financial exploitation costs the state of Utah \$51 million a year in lost resources, costs to businesses including financial institutions, and costs to tax payers through public programs like Medicaid.

We know that here in Michigan we continue to see increases in the numbers of cases reports to Adult Protective Services, our primary response system for reports of abuse. Referrals have increased by 30% over the past five years. For the small percentage of victims that do come forward, the remedies and interventions currently available are simply not enough to make Michigan a safe place for older and vulnerable adults. Increased awareness, coordination of services, and increased penalties for perpetrators are needed if Michigan is to become that safer place.

In 2005/2006 Michigan's first Task Force on Elder Abuse was formed. This Task Force - comprised by experts from law, medicine, the judiciary, state and local law enforcement, prosecution, guardianship, human service agencies, advocates, and service providers - was organized and supported through a partnership between the Office of Services to the Aging (OSA), Department of Human Services (DHS), Michigan State Policy (MSP), and the Office of Financial and Insurance Regulation (OFIR.) The task force was charged with 1) examining issues related to elder abuse and 2) assisting the state in identifying new resources, best practices and necessary changes in law and policy to assist in the prevention of elder abuse. The Task Force took its charge seriously, spending 18 months educating itself about all facets of elder abuse, including heart-wrenching testimony about real-life cases, sometimes from the victims themselves.

The Task Force concluded its charge by presenting 57 recommendations designed to create a cohesive, coordinated, and proactive response to abuse of older and vulnerable adults. These recommendations were designed to improve Michigan's system to better meet the needs of victims, and to plan for how to deal with a burgeoning older adult population.

A number of the Task Force recommendations were legislative, and all but two of the bills before you in this committee stem directly from Task Force recommendations. These recommendations provide tools for law enforcement and prosecutors, protections for consumers, and mechanisms to improve coordination and cooperation between the various agencies and entities providing services to vulnerable persons.

The adoption of these bills will help prevent elder abuse, establish a new foundation and solid footing to address additional policy and practice issues in the future, and strengthen our ability to combat abuse in all its forms. Further, these reforms will position Michigan to respond to new opportunities to receive federal funds that may be made available as authorized in the Elder Justice Act, now federal law.

Twenty or 30 years ago, there were advocates and policy makers sitting in this chair asking for your predecessors' support in passing critical reforms to protect children, spouses, and intimate partners from abuse and exploitation. At that time, the conventional wisdom was that these were family matters, not to be interfered with and that current law was enough.

Over these last 30 years of coming to understand the dynamics of family abuse, we have learned that it is possible to set up systems to better protect victims without taking away all choice and freedom. We have learned that abuse, neglect, and financial exploitation impact us all. We understand that abuse of any segment of the population is first a moral issue, but also a public health and economic issue and that through legislative action it is possible to do better. Moreover, it is our responsibility to do better. And that's what I'm here today to ask you to do for vulnerable and older adults – that which has already been accomplished for children, spouses and intimate partners. We must do better.

This package of bills, without adding severe restrictions or overburdening industries, sends the message that Michigan is serious about protecting our most vulnerable from abuse. These bills allow us to implement much needed reforms to move Michigan forward in the battle against abuse and exploitation in some very specific ways:

Tools for Law Enforcement:

- SB 454 (Nofs – R). - **Video-taped testimony:** Providing for the use of videotaped testimony if under oath and subject to cross examination by the defense attorney. Michigan law currently allows the testimony of children or individuals with a developmental disability to testify by videotape or closed circuit television when the court makes a finding that they will be unable to testify in the presence of the defendant. Creating a special witness protection statute for elderly and vulnerable adults similar to the protections for other vulnerable populations would better protect victims and increase the ability to hold their abusers accountable. Such a statute would not violate the 6th amendment right to confrontation, and would be used as a last resort as it is for populations currently covered.
- SBs 455 Rocca – R; and 465 (Hildenbrand- R) - **Amending sentencing guidelines to increase the likelihood of accountability for financial crimes.** Currently those convicted of financial exploitation rarely serve time.
- SB 459 (Emmons – R) - **Defining “fraudulently obtaining a signature.”** A significant amount of financial abuse is perpetrated by the simple act of getting someone to sign something, electronically or otherwise. A piece of paper may be a deed, a will, a Power of Attorney, or something else. Sometimes duress is involved, but more commonly the victim is tricked into signing it. Current law is difficult to use to prosecute abusers.

- SB 468 (Hansen – R) - **Preventing a magistrate from refusing a complaint filed by someone other than the victim in cases alleging vulnerable adult abuse.** Currently, for elder abuse to be investigated, it is often necessary for the victim to file a formal complaint. For a wide range of reasons including undue influence, fear, and isolation, many vulnerable adults are unable or afraid to file a formal complaint. Michigan law currently prevents a magistrate from refusing a third party complaint regarding a domestic violence victim. This same protection should be provided to vulnerable adult abuse victims.

Protections for Vulnerable Adults:

- SB 461 (Schuitmaker-R) - **Bonding of Conservators, prohibiting taking a lien or mortgage, preventing convicted abuser from inheriting.** Amending the Estate and Protected Individuals Code (EPIC) to require bonding of conservators; prohibiting conservators from taking a lien or mortgage without approval; and preventing a convicted abuser from inheriting from the victim unless specifically forgiven after conviction. Conservators have a responsibility to act in the best interest of the ward, and should be held to the highest standards given the authority granted them by the court to control a vulnerable adult’s resources. Further, the ability to inherit from a victim puts vulnerable adults at risk. Today, in Michigan, a person can abuse neglect or steal from a vulnerable adult and still inherit from that victim, so long as the physical harm he or she perpetrated did not lead to death. This bill also prevents a convicted abuser from inheriting unless formally forgiven by the victim after conviction.
- SB 462 (Bieda – D) - **Requires reporting of abuse to outside authorities for long term care facility employees.** The system for reporting abuse needs to as timely and direct as possible. Current law discourages “whistleblowers” from reporting, which causes a delay. Currently, while most mandatory reporters of vulnerable adult abuse are allowed to report anonymously by law, employees of licensed long term care facilities are required to report abuse to their supervisor or Director of Nursing. Directly reporting to the designated agency to respond to the alleged abuse is more expedient and may fear of retaliation.
- SB 466 (Schuitmaker – R) - **Creates the Senior Medical Alert Program, similar to the Amber Alert.** Allows law enforcement to begin an investigation immediately when a vulnerable adult is reported missing. Under current law, investigations for missing persons require the person be missing for a period of time, typically 24 hours. This bill would provide that if a person is identified as vulnerable, law enforcement can begin investigating and can share information with the media immediately.

- SB 467 (Jones- R) - **Adopt the National Association of Insurance Commissioners (NAIC) Model Law of Variable Annuities into Michigan statute to increase consumer protections.** This model law would increase consumer protections by enhancing suitability guidelines and the right of consumers to cancel a transaction.
- SB 706 (Gregory –D) - **Prohibits insurance producers from using senior-specific certifications as a marketing tool.** This bill ensures that any senior specific designation be backed by a legitimate organization with established criteria, training and CEU requirements, and which does not have marketing as its primary function. Identifies the use of such designation that does not meet this criteria as a deceptive business practice.
- SB 777 (Warren – D) - **Consumer protection against “churning” of replacement life and annuity products.** This bill requires agents to ask if the client holds current life or annuity policies, and requires disclosure about completing new transactions.

Improved Response and Coordination:

- SB 457 (Colbeck – R) - **Establishment of vulnerable adult death review teams.** Allows for the establishment and defines the composition of vulnerable adult death review teams. The establishment of these teams is considered a national best practice for investigations, case analysis for systemic change and improving coordination between investigators, prosecutors, adult protective services, advocates and other partners.
- SB 464 (Shuitmaker – R) - **Development of Model Investigative Protocol.** Requires the state to develop model investigative protocols for vulnerable adult abuse. Such protocols have been used successfully to improve efforts to identify, investigate and prosecute child abuse and will provide a critical tool to improved response and coordination.
- SB 463 (Young –D) - **Financial Abuse Training for Financial Institution Employees.** This bill defines financial exploitation, requires vulnerable adult abuse training for financial institution employees, and provides financial institutions protection for good faith reporting. Financial institutions are in a prime position to identify and report suspected abuse. The quicker suspected financial exploitation is reported the more likely harm can be mitigated. Financial institutions are key partners in this effort.

On behalf of our state’s older adults, I urge your careful consideration of these bills, and look forward to a speedy legislative response to this important issue. Thank up for this opportunity to address this committee this morning.