

VULNERABLE ADULT ABUSE AND NEGLECT REPORTING - BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3062 (attached as an appendix) directs the Legislative Council to study vulnerable adult abuse and neglect with an emphasis on whether certain individuals should be required to report suspected incidents of vulnerable adult abuse and neglect.

BACKGROUND

Federal Law on Vulnerable Adult Abuse and Neglect

Federal laws on child abuse and domestic violence provide services and shelters for victims, but there is no comparable federal law on vulnerable adult abuse. The federal Older Americans Act (42 U.S.C. 3001 et seq., as amended) provides definitions of elder abuse and authorizes the use of federal funds for the National Center on Elder Abuse and for certain elder abuse awareness, training, and coordination activities in states and local communities but does not fund adult protective services or shelters for abused older persons.

Vulnerable Adult Protective Services

All 50 states and the District of Columbia have enacted legislation authorizing the provision of vulnerable adult protective services. Generally, these vulnerable adult protective services laws establish a system for the reporting and investigation of abuse and for the provision of social services to help victims and ameliorate the abuse. In most jurisdictions these laws pertain to abused adults who have a disability, vulnerability, or impairment as defined by state law, not just to older persons.

These statutes vary widely in the age at or circumstances under which a victim is eligible to receive protective services; the definition of abuse; types of abuse, neglect, and exploitation that are covered; classification of the abuse as criminal or civil; reporting (mandatory or voluntary); investigation responsibility and procedures; and remedies for abuse.

Some state vulnerable adult protective services laws only relate to "domestic abuse," which is the abuse of individuals who reside in the community, while other vulnerable adult protective services laws also include individuals who reside in long-term care facilities, known as "institutional abuse." Each state defines long-term care facility differently; moreover, some states include other types of institutions, such as mental health facilities, in their statutes as well.

In some states in which the vulnerable adult protective services law only covers individuals who reside in the community, a separate law addresses institutional abuse. As with the vulnerable adult protective services laws, institutional abuse statutes create a mechanism for reporting, investigating, and addressing incidents of

elder abuse that occur in long-term care facilities or other facilities covered under the law.

Long-Term Care Ombudsman Program

Additionally, all states and the District of Columbia have laws authorizing a long-term care ombudsman program that is responsible for advocating on behalf of long-term care facility residents who experience abuse, violations of their rights, or other problems. The program is mandated in each state as a condition of receiving federal funds under the Older Americans Act. The ombudsman program is an integral part of the systemic response to institutional elder abuse. The program's purpose is to investigate abusive situations when responding to complaints within a facility and then, if appropriate, make a referral to a vulnerable adult protective services program, a law enforcement agency, or the agency responsible for licensing and certifying such facilities. Moreover, in some states, the ombudsman program fulfills the role of adult protective services and has the legal authority to investigate and respond to abuse occurring within long-term care facilities.

Criminal Laws

An increasing number of states are passing laws that provide explicit criminal penalties for various forms of vulnerable adult abuse and neglect. Legislatures are also signaling their intent that elder abuse be treated as a crime in other ways. For example, some vulnerable adult protective services laws include a provision stating that elder abuse may be prosecuted criminally, while others define certain acts, such as sexual abuse, in the same words or by reference to definitions that are used in the criminal laws. In those states in which there is not a specific statute or provision authorizing criminal prosecution for elder abuse, a jurisdiction's basic criminal laws, such as battery, assault, theft, fraud, rape, manslaughter, or murder, can be used to prosecute someone who has committed an act of abuse against an older person. Some legislatures have enacted enhanced penalties for certain crimes against older persons.

NORTH DAKOTA LAW

The 1989 Legislative Assembly enacted legislation that provides for vulnerable adult protection services. The law, codified as North Dakota Century Code Chapter 50-25.2, provides for an adult protective services program. Section 50-25.2-02 requires the Department of Human Services, with the advice and cooperation of county social service boards, to develop, administer, and implement a program of protective services for vulnerable adults. Section 50-25.2-01 defines a "vulnerable adult" as an adult who has a substantial

mental or functional impairment. This section defines "abuse" as the willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult. "Neglect" is defined as the failure to provide essential services necessary to maintain the physical or mental health of a vulnerable adult. The section defines "financial exploitation" as the taking or misuse of the vulnerable adult's resources or property by means of undue influence, breach of fiduciary responsibility, deception, harassment, criminal coercion, theft, or other unlawful or improper means.

North Dakota Century Code Section 50-25.2-03 establishes a procedure for the voluntary reporting of abuse and neglect. The section provides that a person who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect may report the information to the Department of Human Services or to an appropriate law enforcement agency.

North Dakota Century Code Section 50-25.2-14 provides that the department and county social service boards are not required to implement or enforce the chapter with respect to any region, area, or county of the state if the Legislative Assembly does not provide an appropriation to support the implementation and enforcement of the chapter within that region, area, or county. Except for some subsequent funding of two of the three initial demonstration sites, state general funds have not been appropriated to fund this program. Federal funding made available through the Older Americans Act is used to fund vulnerable adult protective services in each of the state's human service regions.

In 1998 each regional human service center began developing elder services units, which are responsible for vulnerable adult protective services, as well as other services.

North Dakota law also provides for criminal penalties for certain acts against vulnerable adults. North Dakota Century Code Section 12.1-31-07.1 provides that the exploitation of a disabled adult or vulnerable elderly adult is a Class A felony if the value of the exploited funds, assets, or property exceeds \$100,000; a Class B felony if the value of the exploited funds, assets, or property exceeds \$20,000 but does not exceed \$100,000; and a Class C felony if the value of the exploited funds, assets, or property is in excess of \$1,000 but does not exceed \$20,000. Section 12.1-31-07.2 provides that in a criminal proceeding in which a disabled adult or vulnerable elderly adult is a victim, the court and the state's attorney are required to take appropriate action to ensure a speedy trial to minimize the length of time the disabled adult or vulnerable elderly adult must endure the stress of involvement in the proceedings.

VULNERABLE ADULT SERVICES STATISTICS

During the period October 2001 through September 2002, the Department of Human Services reported the following statistics regarding vulnerable adult services:

- 602 new cases.
- 453 information and referral calls.
- 155 brief services (required two hours or less of staff time to resolve).
- 559 cases were closed.
- 8,200 total hours were spent on information and referral, brief services, and cases.

The department reported that the referral reasons included:

- 67 percent self-neglect.
- 14 percent neglect.
- 10 percent abuse.
- 9 percent financial exploitation.

Of the requests, 82 percent were considered none-emergency, 8 percent emergency, and 10 percent imminent danger. The department also reported the following demographic information regarding the vulnerable adult services cases:

- 69 percent were aged 60 or older.
- 58 percent were female.
- 93 percent were Caucasian.
- 4 percent were American Indian or Native Alaskan.

The marital status of the cases included:

- 67 percent single or widowed.
- 19 percent married.
- 13 percent divorced.
- 1 percent separated.

The living arrangements of the cases included:

- 54 percent live alone.
- 36 percent live with a spouse or other family member.
- 10 percent live with nonrelatives.

The department reported that the reasons for case closure included:

- 24 percent referred to another agency.
- 14 percent moved out of the area, received protective arrangements, or died.
- 15 percent refused services.
- 11 percent placed in long-term care facility.
- 13 percent referred to home and community-based services.
- 23 percent other.

PREVIOUS STUDIES 1987-88 Interim

During the 1987-88 interim, pursuant to Senate Concurrent Resolution No. 4010, the Legislative Council's interim Law Enforcement Committee studied the alternative means of providing protective services for vulnerable adults who are subject to abuse, neglect, self-neglect, or exploitation. In addition to this study, the Legislative Assembly enacted legislation requiring the Department of Human Services to develop, design, and manage an adult protective services demonstration project through June 30, 1989. The department was

directed to develop the demonstration project pursuant to the objectives of developing cost estimates and a statewide model for the delivery of protective services to vulnerable adults and identifying the number of abused, neglected, self-neglected, or exploited vulnerable adults in the project area; the basic and emergency services necessary for and existing services available to vulnerable adults; and those services not being provided to vulnerable adults in the project area. The department was also directed to encourage the voluntary reporting of abuse, neglect, self-neglect, and exploitation of vulnerable adults and to implement policies for the receipt and investigation of those reports. The department selected as demonstration sites Burleigh and Morton Counties, Cass County Social Services, and the Lake Region Human Service Center. All three demonstration project sites assessed reports of alleged maltreatment of vulnerable adults, provided other adult protective services, and conducted public education campaigns. The three demonstration sites service a combined population consisting of approximately 34 percent of the state population. The final report of the demonstration project recommended that legislation be enacted to establish a statewide adult protective services program designed to serve all adults over age 18 who reside in the state and to provide adequate means for intervention in cases of self-neglect, physical neglect, physical abuse, emotional neglect, financial exploitation, and sexual abuse or exploitation. The report also recommended that the legislation incorporate the protective services functions of the Protection and Advocacy Project and the state long-term care ombudsman program as part of the

proposed adult protective services program. The report recommended that the legislation provide for a system of voluntary reporting until adult protective services became better known and available in the state, at which time the Legislative Assembly could impose reporting requirements on certain categories of professional persons.

SUGGESTED APPROACH

The committee, in its study of vulnerable adult abuse and neglect with an emphasis on whether certain individuals should be required to report suspected incidents of vulnerable adult abuse and neglect, may wish to approach this study as follows:

- Receive information and testimony from the Department of Human Services regarding the vulnerable adult protective services available on a state, regional, and county basis;
- Receive information and testimony regarding the problem of vulnerable adult abuse and neglect, including trends, prevalence, reporting procedures, and whether a need for mandatory reporting exists;
- Receive information from the Department of Human Services and law enforcement on the financial costs that would be incurred with mandatory reporting of vulnerable adult abuse and neglect; and
- Develop recommendations and legislation necessary to implement the recommendations.

ATTACH:1