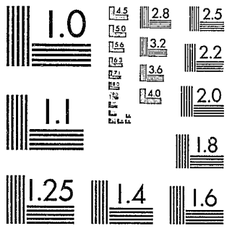

ASPECTS OF ELDERLY ABUSE

STAFF BRIEF 82-16

Wisconsin Legislative Council Staff

State Capitol

July 15, 1982

Madison, Wisconsin

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Special Committee on Elderly Abuse — July 15, 1982

STAFF BRIEF 82-16*

ASPECTS OF ELDERLY ABUSE

INTRODUCTION

This Staff Brief was prepared for the Legislative Council's Special Committee on Elderly Abuse, which was established by the Legislative Council on May 27, 1982. The Committee was directed to study the problem of abuse of the elderly, including physical and psychological abuse and damage to or theft of the elderly's property. The directive also specified that the Committee should conduct a study of the elderly as victims of crimes. [A copy of the complete charge to the Special Committee and a list of the members appointed to the Special Committee are contained in Appendix 1 to this Staff Brief.]

The purpose of this initial Staff Brief is to provide background information concerning aspects of elderly abuse. A consideration of the elderly as victims of crimes is not discussed in this Staff Brief. The main focus of this Staff Brief is on abuse of elderly persons who receive some or all of their care from nonprofessional caretakers, such as relatives. This Staff Brief does not focus on the abuse of the elderly in institutionalized settings, such as nursing homes, although certain aspects, such as the mandatory reporting laws (discussed in Part III), may cover these settings.

PART I serves as an introduction to the problem of elderly abuse. It summarizes past studies on the subject and reviews a variety of stress-creating factors which may contribute to the abuse of elderly persons who are cared for by relatives. PART II describes services for the elderly which may prevent or diminish the abuse of the elderly. This Part also discusses the state's protective service system, which delivers services to persons with "infirmities of aging." PART III discusses mandatory reporting legislation which is intended to identify the scope of the problem of elderly abuse. PART IV presents options for the Committee's initial consideration.

*This Staff Brief was prepared by Jim Schneider, Staff Attorney, and Dave Stute, Chief Staff Attorney, Legislative Council Staff.

PART I

ELDERLY ABUSE; INCIDENCE AND CHARACTERISTICS

This Part briefly presents information on the incidence of elderly abuse and briefly discusses characteristics of the abused elderly and the abuser. Following this, factors in abuse identified in various reports are described.

A. INTRODUCTION; BACKGROUND

Child abuse and spouse abuse have received public and legislative attention in the 1960's and 1970's. Concern over another aspect of domestic abuse, elderly abuse, has become more widespread recently. The extent of the problem of elderly abuse is unknown, though, because data on elderly abuse are scarce [Langley, Ann, Abuse of the Elderly, Project Share, Department of Health and Human Services, Washington, D.C., September 1981, p. 3]. Some researchers estimate that there are at least 500,000 cases each year of abuse of those over 65; others estimate about one million cases. But, as Langley points out, there are problems with these estimates. There is no concensus on how abuse should be defined. The studies, for example, do not necessarily distinguish between abuse and neglect, and often do not attempt to measure the severity of the problem. Another problem is that the data is mostly anecdotal, based on the recollections of cases of abuse, rather than on statistics and records gathered from official sources [Abuse of the Elderly, p. 3].

The information on elderly abuse is thought to be subject to underreporting, similar to other aspects of domestic abuse. The U.S. House of Representatives Select Committee on Aging estimated that abuse of the elderly is less likely to be reported than the abuse of children. The Select Committee estimates that one out of three child abuse cases is reported, but only one out of six cases of adult abuse is reported. The Select Committee's report explains that often elderly who are abused are ashamed to report the trouble or do not want to report it because they are afraid of reprisals. In addition, some elderly persons do not have the physical ability or the means to register complaints [Select Committee on Aging, Elder Abuse (An Examination of a Hidden Problem), Comm. Pub. 97-277, Washington, D.C., 1981, pp. XIV-XV].

B. STUDIES OF ELDERLY ABUSE

A brief description of the findings of five studies follows. In addition to providing data on elderly abuse, these studies also demonstrate the current state of the body of research material on elderly abuse.

1. Report of the Select Committee on Aging, U.S. House of Representatives

The Select Committee on Aging in its 1981 Report estimated that about 4% of the nation's elderly may be victims of some sort of abuse, ranging from moderate to severe. In other words, one out of every 25 older Americans, or roughly one million older Americans, may be victims of such abuse each year [Select Committee on Aging, pp. XIV-XV].

The Select Committee documented a wide range of physical abuse, financial exploitation, psychological abuse, violations of elderly's rights and self neglect. The Committee Report was based on numerous sources, including case histories received by the Committee over a five-year period, review of state studies, questionnaires sent to state human services departments, a review of relevant literature, Committee hearings and reports, letters sent to experts, communication with organizations and hearings held in various locations.

2. 1979 Massachusetts Mail Survey

This 1979 mail survey, conducted by Legal Research and Services for the Elderly, Boston, Massachusetts (a "public interest research group"), contacted various professionals, including social service workers, hospital and legal personnel, police officers and persons in other pertinent occupations.

The survey results were based on the 332 responses to a survey mailed to 1,044 persons. Fifty-five percent of those responding cited an incident of elderly abuse within the previous 18 months. In all, 183 incidents of abuse were reported. Most incidents were reported by visiting nurses, hospital social service directors and private social service agencies. Half of these cases involved physical abuse and 34% involved actual injuries. Forty percent involved "debilitating mental anguish." Verbal harassment was the major form of abuse in 11% of the incidents and malnutrition in 9%.

The survey reported that abuse tended to occur repeatedly to the same person and that, in most cases, the abused person lived with the abuser, who was a close relative. [See O'Rourke, Margaret, Elder Abuse: The State of the Art, Legal Research and Services for the Elderly, Boston, 1981, pp. 7-8, and Abuse of the Elderly, pp. 5-6].

3. 1979 Michigan Study

This study, reviewed in a Congressional Research Service (CRS) document, was completed in February 1980. The study was conducted by the Michigan Institute of Gerontology. It consisted of personal interviews with 225 professionals in five communities in Michigan. According to the

CRS writer, "most respondents felt that older people's needs were being met adequately; fewer than 10% (22 people)...felt that the needs of elders at home were being met rarely or not at all by their caretakers." However, 74 of the respondents expressed the belief that homebound elderly are frequently or always ignored and isolated by their caretakers. Also, 46 respondents felt that verbal and emotional abuse occurs frequently or always; and 18 of the respondents believed that physical abuse occurs frequently or always [Fowler, Jan, Domestic Violence: Elder Abuse, Congressional Research Service, MB80223, Library of Congress, April 1981, p. 3].

4. 1977-78 Ohio Study

This study, also reviewed in the CRS document, was based on patients age 60 or over seen by the Chronic Illness Center in Cleveland, Ohio. The study found that in a one-year period during 1977-78, 9.6% (39 patients) out of 404 patients showed symptoms of abuse. The study characterized the abuse of these 39 patients as: physical -- 29 persons; psychological -- 20 persons; material (involving theft or misuse of property or money) -- 21 persons; and violation of rights (such as being forced from their residences) -- 7 persons. The report noted the obvious -- that most patients had experienced more than one kind of abuse. However, the CRS author cautions that the Chronic Illness Center's caseload consisted mainly of seriously ill or disabled individuals and is not representative of the over-60 population as a whole. Therefore, the 9.6% abuse rate appears to be disproportionately high [Domestic Violence: Elder Abuse, p. 3].

5. 1982 Survey Conducted in Dane County, Wisconsin

In early 1982, a survey was done for the Dane County Advocates for Battered Women by JoAnn Krueger, a graduate student in social work at the University of Wisconsin. The unpublished report is characterized as an "exploratory study" and its author notes that the findings cannot be considered conclusive. For this survey, 50 questionnaires were sent to representatives of agencies in Dane County that provide services to the elderly, including hospitals, clergy, psychological case workers, health personnel, elderly groups and law enforcement officials. The results were taken from 26 respondents who completed at least two of the three questionnaires. Twenty of the responses were from urban areas in Dane County and the other six from outlying districts.

According to the survey report, "physical abuse" was defined in terms of malnutrition or injuries; "psychological abuse" was defined in terms of verbal assault, threat or fear of isolation; "material abuse" was defined in terms of theft or misuse of money or property; and "neglect" was defined in terms of failure to provide the necessities of life for those

elderly for whom a caretaker was responsible. Respondents were asked to report on the number of cases of elderly abuse, using the above definitions, which they encountered in the years 1980 and 1981.

The responses cited a total of 145 cases in Dane County in these years. These 145 cases are not separate cases because there appears to be some overlap, according to the author. Also, the respondents noted that most victims experience more than one type of abuse. The categorization of the reported cases of abuse is as follows:

Physical Abuse	25
Psychological Abuse	38
Financial Exploitation	9
Neglect	76
TOTAL	148

[The author notes that the above figure is greater than 145 because some elderly were reported as experiencing more than one type of abuse.]

C. CHARACTERISTICS OF ABUSE; FACTORS CAUSING ABUSE

The characteristics of the abused elderly person that emerge from the various studies appear to be similar. As one author states, "the victims of elderly abuse are most likely to be over 75 and female. They are most likely to have a physical or mental impairment. They most likely live with their abuser. Because of the above, the abused older person is often physically and emotionally dependent on the abuser" [Langley, Abuse of the Elderly, p. 9].

The profile of the abuser is one of a person who is under stress. The abuser is usually a close relative, such as a son or daughter who lives with the older person and acts as caretaker [Domestic Violence: Elder Abuse, p. 4; Abuse of the Elderly, p. 10].

Since it is an aspect of human behavior, the phenomenon of elderly abuse is extremely complicated. Most commentators observe that a precipitating cause of elderly abuse is family stress. Stress can result from the demands for care presented by the elderly person, who is usually a parent. Langley notes that the most likely setting for abuse is when an impaired parent or relative over age 75 lives with children or other relatives. Eighty percent of home care to the elderly is given by relatives residing in the same household and 1/3rd of these elderly persons require constant medical or personal care [Abuse of the Elderly, p. 12].

Other authorities note that the phenomenon of elderly abuse may be one aspect of a cycle of family abuse, in which the abuser was abused as a child. One study states that children treated nonviolently by their parents as they grew up were very unlikely to attack their parents. However, a child mistreated violently by his or her parents had a 50% chance of attacking those parents later on [Select Committee on Aging, p. 59].

Problems of the abuser can create stress and lead to abuse. Unemployment, financial problems and alcohol and drug abuse can all lead to an increased possibility of elderly abuse. Further, a history of personal or mental problems can be significant in leading to abuse of an elderly person. Other stressful factors contributing to abuse are the lack of close family ties; resentment of the elderly person's dependency both by the care provider and the elderly person; a lack of community resources to alleviate the burden of care; and environmental factors such as poor housing and crowded neighborhoods [Abuse of the Elderly, pp. 12-14].

Social changes and changes in the characteristics of the population are cited as tending to worsen the problem of elderly abuse. The elderly population is increasing in size relative to the younger age groups, and the segment of the elderly which is growing most rapidly is the "old-old," that is, those over age 75. This means that today's middle-aged adult is more likely to have a living parent than his or her counterparts in previous generations. Since family size has decreased, this means that there are fewer children to care for the aging parents. Traditionally, the responsibility of caring for aging parents at home has fallen upon married daughters or daughters-in-law. Since about half of all married women are now in the labor force, the number of caretakers has been reduced at a time when the number of elderly has increased. These trends may result in excessive demands being placed on families, creating the potential for abuse [Elder Abuse: The State of the Art, p. 5].

PART II

SERVICES FOR THE ELDERLY

This Part reviews social services which may be useful or appropriate in preventing or ameliorating abuse of elderly persons. The first portion of this Part briefly sets forth those social services reported as being helpful in addressing elderly abuse problems. It then reviews selected services available to or directed at families and elderly persons under the social services system established by federal and Wisconsin law. The second part reviews the protective services system, which establishes a statutory basis for the delivery of certain of these services. [References in this Part to "s. 51.42/.437 boards" means the community boards established under s. 51.42, Stats., to provide mental health, alcoholism and drug abuse services, and established under s. 51.437, Stats., to provide developmental disability services.]

A. SOCIAL SERVICES HELPFUL IN ADDRESSING ELDERLY ABUSE

Although elderly abuse has only recently been identified as a separate and distinct problem, there appears to be some general agreement on those social services which can be helpful in reducing abuse. One study identifies the following classes and kinds of services, which are aimed at situations where the elderly person is being cared for by family members:

1. Support Services - A variety of services which supplement the family's efforts and relieve them of some of the burden of providing care, such as home nursing care, homemaker/home health aide, home-delivered meals, home repair, home visitation programs, day care, overnight respite care and transportation.

2. Educational and Counseling Services - Programs designed to aid the family in understanding and coping with the problems that arise when caring for the elderly and to reduce stress.

3. Development of Housing Alternatives - Provision of housing arrangements, other than nursing homes, as an alternative to the home environment [Elder Abuse: The State of the Art, p. 29].

Another suggested set of services includes:

1. Home-related services in the form of home aides, medical or nursing care or both, meal delivery services, home repair and home visitors;

2. Monetary assistance;

3. Day care and respite day care centers;

4. Transportation services;

5. Counseling and other mental health services; and

6. Educational problems focusing on the care of the aged.

[From Black, Marilyn R., and Jan D. Sinnott, eds., The Battered Elder Syndrome: An Exploratory Study, College Park, Md. (1979), as reported in Elder Abuse, U.S. Department of Health and Human Services (1980), p. 47.]

Generally, it appears that a broad range of social services are suggested as appropriate for preventing, reducing or alleviating elderly abuse in the various settings in which such abuse occurs. A list of selected Wisconsin programs which provide supportive services of the types listed above are set forth below. The list of programs is not intended to be exhaustive but, rather, to demonstrate what services are currently available. The primary criterion for inclusion was whether the program provided services which would assist elderly persons in leading independent lives or would assist in caring for the elderly, in those situations where the elderly person resided with family members.

All of these programs, other than the nutrition program administered by the Department of Public Instruction, are administered by the Department of Health and Social Services (DHSS). Program descriptions and funding levels were taken from unpublished material provided by the Wisconsin Legislative Fiscal Bureau.

1. Social Services Under Title XX of the Social Security Act

This program, which applies to low-income persons of any age, provides a broad range of services, including supportive home care, transportation, counseling, day services, home-delivered or congregate meals, legal services and sheltered employment. For elderly persons, eligibility is restricted to those persons receiving Supplemental Security Income (SSI) or those whose income is not more than 70% of the state median income. [Current maximum income levels for eligibility are $8,561 annually for one person and $11,195 for a family of two.]

Services under this program are directly provided, or purchased, by county departments of public welfare or social services with a combination of federal, state and county funds. State law requires that federal and state funds be matched by local funds. The matching requirements for calendar year 1982 are 93% state-federal funds and 7% county funds. For

calendar year 1983, state and federal funds can comprise no more than 91% of program expenditures and the county must match 9%. The county may use private donations to pay up to 25% of its required matching share.

In calendar year 1980, it was estimated that 26,668 persons age 65 or older were served by county public welfare or social service departments under this program. The estimated expenditures for 1981-83 are $10,700,000 in federal funds and $15,092,900 in state general purpose revenue funds.

2. Social Services Under the Older Americans Act

This program, funded under the Older Americans Act of 1965 [P.L. 89-73], provides a wide range of services to persons age 60 or older, regardless of income. These services include transportation, supportive home care, counseling, housing assistance, respite care, recreation and health screening, information and referral. Services are provided or purchased by county aging units using a combination of federal and local funds. ["County aging units" are commissions, committees or departments created by resolution of the county board; their creation is a prerequisite to the receipt at the county level of Older Americans Act funds.] Federal law requires 5% state matching funds and 10% matching local funds.

County aging units are required to prepare and secure DHSS approval of an annual plan for provision of services under this program. County aging units have flexibility in determining what services will be provided in the county. Funds are distributed to counties in accordance with a formula which initially allots $8,000 to each county annually, plus an additional amount computed on the basis of four factors related to the individual county's elderly population.

It is estimated that this program served 182,650 persons in fiscal year 1981-82. The estimated expenditures under this program for the 1981-83 biennium is $8,228,300 of federal funds. No state funds are directly allocated to this program. The required 5% state match with Older Americans Act funding is credited from state funding of the nutrition program (discussed next).

3. Nutrition Program -- Department of Health and Social Services

This program provides meals to persons age 60 or over, regardless of income level. Under the program, such persons are eligible for home-delivered or congregate meals. The program currently operates at approximately 560 sites in Wisconsin's 72 counties. The program is funded by Older Americans Act funds, United States Department of Agriculture (USDA) funds, state funds and donations from participants. Federal law

r quires a 5% state match and 10% local match of the Older Americans Act funds provided for the nutrition program. Funds donated by participants in the program cannot be applied against the local matching share.

The nutrition program is administered by county aging units, which either operate the programs directly or contract with private nonprofit corporations. Older Americans Act funds are distributed to each county on the basis of the number of low-income elderly persons in each county. The USDA funds are distributed by the DHSS to each county and are a flat amount (currently 51.5¢) for each meal served.

In calendar year 1981, it was estimated that this program served approximately 114,440 persons. State funding for this program exceeds the minimum level required to match federal expenditures. For the 1981-83 biennium, the estimated expenditures will be $19,450,700 in federal funds and $8,548,500 in state general purpose revenue funds.

4. Nutritional Program -- Department of Public Instruction

This program, administered by the Department of Public Instruction under s. 115.345, Stats., provides meals to persons age 60 or over through the school lunch program. Thus, it makes meals available to the elderly only during the school week.

Participation in the program is voluntary on the part of school districts. During the 1980-81 school year, 624,000 meals were served to the elderly. Participants may be required to pay up to the first 65¢ of the cost of the meal; the state reimburses the school district for those costs which exceed 65¢ per meal, up to a maximum of 20¢ per meal. If meal costs exceed 85¢, the remaining cost may be required to be paid by the participant.

The estimated cost for this program in the 1981-83 biennium is $250,000 in state general purpose revenue funds.

5. Senior Companion and Retired Senior Volunteer Programs

These programs are open to persons age 60 or older. In addition, participants in the Senior Companion Program must also be classed as low-income (a maximum annual income of $5,875 for one person and $8,150 for a family of two).

Under the Senior Companion Program, elderly persons help other elderly persons who are residing in their own homes with light household chores, managing personal affairs and making contacts with governmental agencies. Under the Retired Senior Volunteer Program, elderly persons

perform community volunteer services in such locations as schools, hospitals, nursing homes, day care centers and nutrition sites.

These Programs are funded by federal funds available under the Domestic Volunteer Services Act [P.L. 93-113], state funds and local funds. Federal funds for the Senior Companion Program require a 10% local match. Federal funds for the Retired Senior Volunteer Program require a 10% local match during the first year, a 20% local match during the second year and a 30% local match during succeeding years. The local matching share required for the state funds for both Programs is 10%. Federal funds for both Programs are allocated by the federal government directly to private nonprofit organizations operating the Programs.

Participants in Senior Companion Programs work approximately 20 hours per week and receive an hourly wage of $3.35. They also receive transportation assistance, a meal allowance and accident and liability insurance coverage during their working hours. Participants in Retired Senior Volunteer Programs provide about 12-15 hours of volunteer service per month. Participants receive transportation assistance, a meal allowance, a yearly recognition dinner and, in some cases, accident and liability insurance.

As of December 31, 1981, there were 13 Retired Senior Volunteer Programs in 25 counties and one Senior Companion Program in one county that were federally funded. During January-March 1982, an estimated 8,676 persons participated in the Retired Senior Volunteer and Senior Companion Programs.

The estimated costs of these Programs for 1981-83 are $1,382,400 in federal funds and $603,300 in state general purpose revenue funds.

6. Senior Employment Programs

Low-income persons age 55 or older are eligible to participate in senior employment programs funded by the Older Americans Act. Maximum income for eligibility purposes is $5,850 annually for a non-farm single person and $7,775 annually for a non-farm family of two.

Under the programs, grants are provided by DHSS to private nonprofit agencies or governmental units that provide community services. Grant funds are used to pay salaries, fringe benefits, costs of a physical examination and other work-related costs of elderly employes. Employes can either perform administrative duties within the employing agency or participate in providing those services undertaken by the agency. Examples of such services include outreach, transportation and homemaker services. During the period from August 16, 1980 to July 31, 1981, 333 elderly persons participated in this program.

The program requires a 10% local match of federal funds. The estimated expenditure for 1981-83 is $3,171,100 of federal funds.

7. Block Grants for Services for the Elderly

Persons age 60 or older may participate in nonfederally-funded Retired Senior Volunteer or Senior Companion Programs, or home-delivered meals, funded by a state block grant for this program. The block grant was created in Ch. 20, Laws of 1981 (the Biennial Budget Act), and became operative in calendar year 1982.

Under the program, funds are allocated to each county or tribal unit based on the number of low-income elderly persons residing in the county or tribal unit. A 10% local match of state funds is required. Funds are used for the activities set out above. The activities, and the benefits to participants, are similar to those for the similar federally-funded programs (see 3 and 5, above).

In calendar year 1982, 44 counties and tribal units are using these grants for home-delivered meals and 59 are using them for volunteer programs. Twenty-one of these counties are using grant funds for both.

The estimated 1981-83 cost for this program is $880,100 in state general purpose revenue funds.

8. Respite Care

Respite care services [which first received state funding for calendar year 1980, under s. 51.42 (8), Stats.] are available for any noninstitutionalized dependent individual of any age, including an elderly person. Respite care is a temporary provision of services, which is designed to help prevent institutionalization by relieving the usual provider of continuous care to a dependent individual (i.e., to provide a "respite"). Respite care is provided in the home of the dependent person or in a setting close to the dependent's home, such as a foster home or group home.

During the period from July-December 1981, 32% of those served under the respite care program were age 65 or over.

Respite care projects are funded with state funds and local matching funds. Funds are allocated by the DHSS to community s. 51.42/.437 boards. During calendar year 1982, the state funds 93% of the program costs and the local board must provide 7% of program costs. The local board may use private donations to comprise up to 25% of its required match. Services are provided either directly by the local board or are provided under contract with another private or public agency.

Respite care programs are funded on the basis of application and competitive review by the DHSS. In calendar year 1981, 10 respite care projects were funded. In calendar year 1982, these 10 projects are receiving 70% of their calendar year 1981 funding and four additional projects were selected for funding with the remaining dollars available.

State and local funds are used to pay the salaries of providers of respite care, as well as the local agency's administrative costs. The 1981-83 estimated state costs for this program are $639,700 of general purpose revenue funds.

9. Community Options Program

Chapter 20, Laws of 1981 (the Biennial Budget Act), newly created the Community Options Program in s. 46.27, Stats. The Program involves the screening of persons seeking admission to a nursing home or a state center for the developmentally disabled to determine whether such persons can be served by noninstitutional community-based services. [Although the Program does not itself provide direct services to the elderly, it is included here because it can serve as a mechanism to make services available and accessible to an elderly person.]

This new Program is being phased in on a gradual basis, with eight volunteer counties participating in calendar year 1982 -- Pepin, Rusk, Portage, Waupaca, La Crosse, Winnebago, Racine and Dane. In calendar year 1983, the Program will be expanded so that the total number of nursing home residents in all participating counties equals 70% of the state's nursing home population. Full implementation statewide will not take place until calendar year 1984.

The Community Options Program is administered in participating counties by the community s. 51.42/.437 boards, the county social services or public welfare department or the community human services board.

State funding is provided to participating counties for assessment, case planning and the expansion of community-based services. Federal and state matching medical assistance (Medicaid) funds may be earned by counties on a reimbursement basis to cover the assessment costs for persons eligible for medical assistance. The state funds (excluding those to match federal medical assistance) are allocated to participating counties on the basis of a three-factor formula.

Within the limits of funds available, a participating county is required to conduct an assessment for any person seeking admission to a nursing home or to a state center for the developmentally disabled. Assessment must be done by persons knowledgeable about the needs of the person being assessed and about the types of noninstitutionalized

community-based services which are available. A detailed plan for the delivery of needed services is developed for those persons who have been assessed and for whom noninstitutional community services are feasible, financially viable and preferred by the person and the person's guardian.

Once the program is fully implemented and operational within a county, if an assessment determines that nursing home care is not appropriate for a person eligible for medical assistance, and if state and federal funds are available to support noninstitutional services of that person, medical assistance cannot be made available for nursing home services for the assessed person.

The estimated 1981-83 costs of this Program, excluding state administrative costs, are $332,600 of federal funds and $3,315,800 of state general purpose revenue funds.

B. PROTECTIVE SERVICE SYSTEM

This portion of Part II first reviews the protective service system. It then discusses protective services and protective placement.

1. Background; The System

Chapter 55, Stats., entitled "Protective Service System," establishes a statewide system to provide supportive services to persons who are identified as being in need of them. Created in 1974 [Ch. 284, Laws of 1973], the protective service system covers persons subject to the "infirmities of aging," as well as those persons with chronic mental illness, mental retardation or other developmental disabilities or like incapacities. "Infirmities of aging" is defined to mean "organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care or custody" [s. 55.01 (3), Stats.].

In the legislative declaration of policy, it is stated that protective services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment. It is further declared that ch. 55 is designed to establish those services, assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, exploitation and neglect [s. 55.001, Stats.].

The protective service system is directed at persons who, because of their conditions or capabilities, are susceptible to self neglect, neglect

by others, hazardous situations, abuse and having advantage taken of them. The system consists of:

a. A wide range of social and health services designed to meet specific needs of persons within the scope of ch. 55; and

b. A series of court-related activities when it is alleged that a person is incompetent or incapable of providing for his or her own needs. Such proceedings may lead to issuance of an order for provision of services to a person or an order that a person be protectively placed.

The social services offered under the protective service system are a range of services described in the first portion of this Part. The function of the protective service system is to establish a mechanism which identifies persons needing services, brings such persons and service providers together and, if necessary, provides for sheltered care and custody of such persons (i.e., protective placement).

The DHSS has responsibility for developing and administering the statewide protective service system. The system includes community s. 51.42/.437 boards, county departments of public welfare and social services, community human services boards and other public or private organizations concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons.

The vehicle used to ensure that services necessary for the functioning of the protective service system are available is the annual comprehensive coordinated plan and budget required to be submitted to the DHSS, under s. 46.031, Stats., by county public welfare or social service departments, community s. 51.42/.437 boards and community human services boards.

The system is implemented in each county by use of a formal written interagency agreement, which identifies the services available, delineates responsibility for provision and funding of these services, provides a case management system for persons who receive protective services voluntarily, identifies priorities in system development and establishes procedures governing relationships between agencies, the court and the state. All participating agencies sign the joint agreement [DHSS, Guidelines for the Wisconsin Protective Service System, June 1, 1977].

2. Protective Services

Protective services are identified in s. 55.04 (1) (a), Stats., as the following:

a. Outreach;

b. Identification of persons in need of services;

c. Counseling and referral for services;

d. Coordination of services for individuals;

e. Tracking and follow-up;

f. Provision of social services;

g. Case management;

h. Legal counseling or referral;

i. Guardianship referral; and

j. Diagnostic evaluation.

In addition to having specific responsibility for providing these services, the Department has general authority to include such other services as it deems appropriate.

Protective services may be provided to a person under any of the following conditions:

a. The person who needs or believes he or she needs protective services may seek them.

b. Any "interested person" (defined as any adult relative or friend of a person to be protected, or any official or representative of a public or private agency concerned with the person's welfare) may request protective services on behalf of a person in need of them.

c. The DHSS may provide protective services on behalf of any person in need of them.

d. A court may order such services for a person who has been determined to be incompetent under s. 880.33 (the incompetency law) if the person entitled to the services will incur a "substantial risk of physical harm or deterioration" [s. 55.05 (2), Stats.].

Section 55.05 (3), Stats., requires that persons receive protective services voluntarily, with several exceptions. Services may be provided on an involuntary basis if ordered by a court, requested by the person's guardian or if necessary in an emergency situation. However, emergency services may be provided for no more than 72 hours and there must be reason to believe that if they are not provided, the person entitled to the services, or others, will incur a substantial risk of serious physical harm [s. 55.05 (4) (a), Stats.].

3. Protective Placement

Protective placements, authorized under s. 55.06, Stats., are made for the purpose of providing care and custody to persons in need of such service. Securing protective placements is a judicial proceeding and, before such a placement can be ordered, there must be a finding, by clear and convincing evidence, that the individual proposed for placement meets the following standards:

a. Has a primary need for residential care and custody;

b. Has been determined to be incompetent in a proceeding under s. 880.33, Stats. (which results in the appointment of a guardian);

c. As a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities, is so totally incapable of providing his or her own care or custody as to create a substantial risk of serious harm to him or herself or to others (serious harm may be occasioned by either overt acts or acts of omission); and

d. Has a disability which is permanent or likely to be permanent [s. 55.06 (2), Stats.].

Protective placements are to be made in the least restrictive environment consistent with the needs of the person to be placed. Also, the court has discretion to order protective services as an alternative to protective placement. Placement must be preceded by a comprehensive evaluation of the person in need of placement.

Protective placements may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled, foster care and other home placements or to other appropriate facilities, but may not be made to units for the acute mentally ill. Protective placement in a locked unit requires a specific finding of the court as to the need for such action. [However, a placement facility may transfer a patient from a locked to a less restrictive environment without court approval.]

The DHSS or an agency responsible for a placement must review the status of each person so placed at least once every 12 months after the date of admission, unless the court orders more frequent review in its placement order. The DHSS, an agency, a guardian or a ward or any other interested person may at any time petition the court for termination of protective placement. The petition must allege that the conditions which originally warranted placement are no longer present. The petition is heard and decided upon by the court. In addition, termination of guardianship automatically revokes the placement made or protective services provided, unless the placement or services are continued on a voluntary basis, i.e., with the consent of the ward.

PART III

MANDATORY ABUSE REPORTING LAWS

This Part briefly reviews mandatory elderly abuse reporting laws. An overview of the status of adoption of such laws nationally is followed by a listing of the suggested components of an abuse reporting law. Following this is a description of 1981 Assembly Bill 763, an abuse reporting proposal considered by the 1981 Wisconsin Legislature.

Mandatory abuse reporting laws are recommended as a first step in dealing with the problem of elderly abuse. They are believed to be necessary because they aid in identifying the scope, nature and extent of elderly abuse.

This information can then be used at the policy-making level when considering such issues as whether additional protection to abused persons is necessary; whether existing types of social services directed at elderly abuse are adequate; whether funding levels for such services are adequate; and whether the mechanisms for delivery of such services are functioning properly. Reported information can also highlight problems that require changes in civil and criminal laws. Lastly, identification of cases of abuse of individual persons can initiate investigations and the undertaking of remedial action.

A. OTHER STATES

The U.S. House of Representatives' Select Committee on Aging recently conducted a survey of state activities concerning protective services. The Select Committee's report, dated April 1981, shows that 26 states (including Wisconsin) have protective services laws. However, the study revealed that only 16 of the 26 states also require mandatory reporting of elderly abuse cases. These states are: Alabama, Arkansas, Connecticut, Florida, Kentucky, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, Oklahoma, South Carolina, Tennessee, Utah, Vermont and Virginia. Wisconsin is one of the 10 states having a protective services law, but not requiring mandatory reporting. [See Select Committee on Aging, pp. 91-96.]

Among the states with reporting requirements, there are variations in who must report abuse and what penalties apply for failure to report. Most states with reporting requirements require all health professionals to report known or suspected cases of abuse, neglect or exploitation to a designated agency. Some states require other specified persons to report, including social workers, law enforcement officials, clergy and teachers. Florida requires any person to report suspected cases of abuse [Salend,

Elyse, Maureen Satz and Jon Pynoos, Mandatory Reporting Legislation for Adult Abuse, report prepared for the National Conference on Elder Abuse, March 1981]. According to the Salend report, most of the 16 reporting laws were passed within the last six years. [The report also notes that legislation is pending in several states.]

The Salend report notes that variation in coverage of the protective services laws reflects the different impetuses which led to their passage. As an example, the study notes that spouse abuse, abuse of the disabled and abuse of care facility residents are covered in some of state laws, but not in others. The report also observes that the laws are in an evolutionary stage because of their recent development and passage, and, therefore, their effectiveness has not yet been documented.

B. RECOMMENDED COMPONENTS OF AN ABUSE REPORTING LAW

The staff of Legal Research and Services for the Elderly, Boston, Massachusetts, has developed suggested recommendations for an abuse reporting law and adult protective services law. Those suggestions are set forth below for illustrative purposes.

The stated intention of the persons developing these recommendations, was to attempt to balance the principle that society has an obligation to provide protection and the care for particular persons who are victims of abuse, neglect, exploitation or abandonment, against the principle that each person has a right to self-determination and due process of law.

The recommendations by Legal Research and Services for the Elderly, as applied to the reporting of elderly abuse, have the following components:

1. Applicability -- the law should require reports on persons 60 and older who are abused, neglected, exploited or abandoned.

2. Definitions -- the recommendations provide suggested definitions of "abuse," "neglect," "exploitation" and "abandonment."

3. Who must report -- it is recommended that specific categories of persons, including physicians, nurses, social workers, coroners, medical examiners, dentists, hospital staff, nursing home staff, home health agency and staff, home care persons, clergy, adult foster facility staff, police officers and pharmacists, should be required to report.

Reports should be required when any of the above persons has "reasonable cause to believe or suspect that an elderly or incapacitated person has been abused, neglected, exploited or abandoned, or is in a

condition which is the result of such treatment." The report must be made to the appropriate agency within 24 hours.

Any other person who has reasonable cause may report the information.

4. Confidentiality and immunity -- it is recommended that the identity of the reporting person should be required to be kept confidential and should be disclosed only with that person's consent or by judicial process. Any person acting in good faith, who makes a report, should be immune from civil and criminal liability.

5. Penalty for failure to report -- it is recommended that a person who is required to report but does not do so should be liable for a fine of $500 to $1,000.

6. Investigation of reports -- it is recommended that one state agency should be responsible for receiving and investigating reports. This agency should have a staff to: receive reports at all times; keep records; have knowledge of services and access to services; and have the ability to respond quickly. The agency should either provide services or coordinate service delivery by referral.

It is recommended that investigations be conducted by persons trained in human services. The investigation should include a visit to the abused person's home and consultation with persons knowledgeable about the case. The initial investigation should be completed within 72 hours of the report. The investigator should "have access to a multidisciplinary geriatric team for consultation."

7. Assistance of law enforcement officers and the courts -- it is recommended that in conducting the investigation, the agency should have the authority to seek the assistance of law enforcement officers and the courts. The agency should have the authority to petition the court for a court order to enjoin intervention with the agency's access to the person for investigation. It is recommended that the order should only be issued upon a showing that there is "reasonable cause to suspect" that the person in question has been abused, neglected, exploited or abandoned, and that access has been denied.

8. Refusal of services -- it is recommended that the agency should terminate intervention proceedings if the adult subject to the suspected abuse refuses services or withdraws consent.

The recommendations, since they were developed within the context of a protective service law, also include provisions for the development of care plans and the delivery of voluntary and involuntary services, including the issuance of emergency orders.

C. 1981 ASSEMBLY BILL 763, RELATING TO REPORTING ABUSE OF PERSONS ELIGIBLE TO RECEIVE PROTECTIVE SERVICES

As noted in the above heading, this proposal required reporting of abuse of persons eligible to receive protective services. This class of persons included "aged infirm persons," under ch. 55, Stats. It is discussed here in order to illustrate the components and level of detail of the Bill, which was considered in the Wisconsin Legislature recently.

1981 Assembly Bill 763 was introduced in the Wisconsin Legislature on September 23, 1981, by Representatives Rutkowski, Tesmer and 20 other Representatives and was cosponsored by nine Senators. The Bill was referred to the Assembly Committee on Health and Social Services, which introduced and adopted Assembly Substitute Amendment 1 and recommended passage of the Bill, as amended, by a vote of ayes, 11; noes, 2. The Bill was laid on the table in the Assembly. No subsequent action was taken on the Bill and it failed to pass.

The Bill created an "adult abuse reporting" provision which was placed in ch. 55 (Protective Service System), discussed above in Part II, B. Therefore, it proposed to require reporting of abuse to several classes of persons, including "aged infirm persons."

The description which follows is based on the Bill in the form reported out of committee (Substitute Amendment 1). Development of the Substitute Amendment had been preceded by a public hearing which resulted in several modifications of the proposal.

1. Definitions

The Bill created definitions of the following terms:

a. "Abuse" meant the wilful infliction on a protected person of physical pain or injury, debilitating mental anguish or unreasonable confinement.

b. "County agency" meant the county department of public welfare or social services.

c. "Material abuse" meant theft or any other crime involving a protected person's property.

d. "Neglect" meant a significant danger to a protected person's physical or mental health because the person who takes care of the protected person is unable or unwilling to provide food, shelter, clothing or medical or dental care. However, it did not include actions by a health care professional undertaken within accepted professional standards.

e. "Protected person" meant a person who is mentally ill, developmentally disabled, subject to the infirmities of aging or subject to other like incapacities.

It should be noted that "infirmities of aging" is defined in the protective services law to mean "organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care or custody" [s. 55.01 (3)]. This definition is limited to persons having substantial problems and the applicability of the reporting requirement to the elderly was accordingly limited.

f. "Self neglect" meant a significant danger to a protected person's physical or mental health because the person is responsible for his or her own care but is unable to provide food, shelter or medical or dental care.

2. Reporting Requirement

The Bill established a reporting requirement under which specified persons (listed below) were required to report any instance of abuse, material abuse or neglect. The person was to immediately notify the county agency or the administrator of the facility in which the protected person resides about the facts and circumstances underlying his or her belief that abuse, material abuse or neglect had occurred. If an administrator received a report, or if the administrator believed that abuse, material abuse or neglect had occurred, the administrator was required to notify the county agency by telephone or in person within 24 hours, excluding Saturdays, Sundays and legal holidays.

In addition to the specified persons who were required to report, any other person who received a report or who believed that abuse, material abuse or neglect had occurred could report to the county agency.

The persons required to report instances of abuse, material abuse or neglect were as follows:

a. Health care professionals, such as physicians, physicians' assistants, physical therapists, nurses, chiropractors, dentists and others providing health care.

b. Coroners.

c. Medical examiners.

d. Social workers.

e. Police officers, constables and sheriffs.

f. Guardians.

g. Psychologists.

h. Ambulance attendants.

i. Emergency medical technicians--advanced (paramedics).

j. Administrators of a hospital or home health agency licensed or certified under state or federal law.

3. Liability for Reporting

The Bill provided that an employer may not discharge or otherwise discriminate against any person who reported in good faith. Under the Bill, a person could not have been held civilly or criminally liable or found guilty of unprofessional conduct for reporting in good faith.

4. Investigations

The county agency was required to investigate a report of suspected abuse, neglect or self neglect within 24 hours after notification, excluding Saturdays, Sundays and legal holidays. Reports of material abuse were not subject to a specified time limit. However, if an agent of the investigator was the subject of the initial report, the investigator was required to notify the DHSS within 24 hours, excluding Saturdays, Sundays and legal holidays. In such cases, the Department or an agency designated by the Department was to independently investigate the report. Also, if the person was in a nursing home, the county agency was permitted to notify the DHSS and request that it investigate.

The scope of the investigation was at the discretion of the investigator and could have included a visit to the protected person's residence, observation of the protected person and an interview with the protected person and anyone who takes care of the protected person. In order to aid investigations, the Bill provided for the release of mental health treatment records and patient health care records to the county agency or the administrator of a facility.

If anyone except the protected person interfered with the investigation, the investigator could have petitioned the circuit court for an order prohibiting the interference. If the investigator so requested, a sheriff or police officer was required to accompany the investigator during visits to the protected person's residence. The protected person had the right to refuse an investigation and services,

and it was required that the protected person be notified of his or her right to refuse to accept services or to allow an investigation. However, the protected person could not have refused services or refused to allow an investigation if the person's guardian authorized the investigation or services.

Upon completion of the investigation, the county agency was required to determine if protective services were necessary and could have provided such services or arranged for services with other agencies. If the investigator believed that substantial physical harm, irreparable injury or death could have occurred, the investigator was required to notify the protective services agency to provide emergency services. Also, if an investigator found that a protected person residing in a facility had suffered abuse, material abuse or neglect, the investigator was required to notify any agency that licensed the facility within 10 days, excluding Saturdays, Sundays and legal holidays.

5. Records and Annual Reports

Every investigator was required to prepare a report on the investigation on forms prepared and distributed by the DHSS. The DHSS was required to prepare and distribute statistical reporting forms on which county agencies must record statistical information. The DHSS was required to use these forms to review the effectiveness of the program and to plan changes in the program. The DHSS was further required to report to the Legislature and the Governor for five years following the effective date of the Bill.

6. Penalty

The Bill specified that any person who violated the provisions of the law was required to forfeit up to $100 for each offense.

PART IV

POSSIBLE OPTIONS FOR COMMITTEE CONSIDERATION

This Part presents policy options which could be considered by the Special Committee. The options listed below are not intended to be exhaustive nor are they intended to preclude consideration of other alternatives. Rather, they are offered as a basis for initial Committee discussion.

A. DEVELOP A MANDATORY REPORTING LAW

The Special Committee could determine that the lack of information concerning the prevalence of elderly abuse could best be dealt with by a law which required the reporting of cases of abuse. It can be argued that such a law will better identify the scope of the problem and aid in formulating decisions on how to deal with elderly abuse. Statistics on the frequency and nature of elderly abuse could also highlight the need for possible changes in civil and criminal laws.

If the Special Committee decides to develop a mandatory reporting law, then numerous issues arise. Key issues include the following topics:

1. Definitions of "abuse." How narrow or inclusive should they be?

2. Scope of the reporting requirement. What range of persons potentially subject to abuse (all those above a specified age; just the "aged infirm"; others) should fall within the reporting requirement? Who should be required to report suspected abuse?

3. Investigation. Who should perform investigations? How soon must they commence? What powers should investigators have?

4. Funding. How, and by whom, should the reporting system be funded?

B. REVIEW SERVICES AIMED AT ELDERLY ABUSE

As discussed in Part I, elderly abuse is believed to arise from several different causes. The social services system is relied upon to provide services which will prevent or ameliorate elderly abuse by addressing its causes. The Special Committee may wish to review the current social services programs, and delivery mechanisms, as they relate to preventing or ameliorating elderly abuse, to determine whether changes or modifications should be proposed.

Such a review could cover such questions as:

1. Are social services and protective services available to the elderly throughout Wisconsin?

2. Are these services adequately funded?

3. Are these services effectively coordinated so that they are made available in an efficient manner to persons in need?

4. Can improvements in service availability or delivery be made?

JS:DJS:kjh;kja

APPENDIX I

COMMITTEE CHARGE AND MEMBERSHIP LIST

ELDERLY ABUSE, SPECIAL COMMITTEE ON

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Study Assignment: The Committee is directed to conduct a study of (1) the problem of abuse of the elderly, including but not limited to, physical and psychological abuse and damage to or theft of property by family members, the elderly's employes or employer, employes of health care facilities in which the elderly reside and juveniles; and (2) the elderly as victims of crime, including research concerning the actual victimization of the elderly by criminal acts, the reasons for fear by the elderly about crime and community solutions and programs which have been successful in reducing crimes against the elderly. The Committee is directed to report to the Council by January 17, 1983.

Established at the May 27, 1982 Legislative Council meeting, pursuant to A.J.R. 8, introduced by Rep. Louise Tesmer and others, and S.J.R. 44, introduced by Sen. Lynn Adelman and others.

13 Members: Appointed at the May 27, 1982 Legislative Council meeting: 6 Representatives; 2 Senators; and 5 Public Members.

Legislative Council Staff: Jim Schneider, Staff Attorney; Susan Goodwin, Council Analyst; and Pat Coakley, Secretarial Staff.

END