

**Adopted As Policy by the American Bar Association House of Delegates  
at the 2002 Annual Meeting of the American Bar Association**

**AMERICAN BAR ASSOCIATION  
COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY  
REPORT TO THE HOUSE OF DELEGATES**

**RECOMMENDATION**

1 RESOLVED, THAT the American Bar Association supports efforts to improve the response of  
2 federal, state, territorial and local governments and of the criminal and civil justice systems to  
3 elder abuse, neglect and exploitation (hereinafter “elder abuse”).  
4

5 RESOLVED, FURTHER THAT in order to address and reduce the incidence of elder abuse, the  
6 American Bar Association urges implementation at the federal, state, territorial and local levels  
7 of the following actions based upon recommendations adopted by the National Policy Summit on  
8 Elder Abuse in December 2001:

- 9 (1) Create a nationwide structure for raising public awareness; supporting research, training  
10 and technical assistance; funding critical services; and coordinating local, territorial, state,  
11 and national resources;
- 12 (2) Develop and implement specialized training about elder abuse for all components of the  
13 justice system;
- 14 (3) Establish federal leadership to ensure that adult protective services and legal and other  
15 services are of sufficient quality to protect and serve victims of elder abuse;
- 16 (4) Create broad-based, multidisciplinary task forces or coalitions in each state to examine and  
17 develop systemic approaches to elder abuse interventions;
- 18 (5) Develop, fund, and implement a multidisciplinary research agenda to sustain, advance, and  
19 assess professional training and practice on elder abuse;
- 20 (6) Maximize and expand resources for preventing and responding to elder abuse;
- 21 (7) Develop adequate tools and services to enable capacity assessments and surrogate decision-  
22 making for victims of elder abuse;

23 (8) Ensure that legal and other services are available to meet the immediate and crisis needs of  
24 victims.

## **REPORT**

The foregoing resolution calls for federal, state, territorial, and local governments and criminal and civil justice systems to improve their response to elder abuse, neglect and exploitation and to implement actions based upon the recommendations promulgated by the National Policy Summit on Elder Abuse in December 2001.

As explained in more detail below, the National Policy Summit on Elder Abuse is a project of the National Center on Elder Abuse, funded by the U.S. Administration on Aging, in which the Commission on Legal Problems of the Elderly is a partner. The Office for Victims of Crime of the U.S. Department of Justice also supported the national policy summit. The summit proceedings will be published in mid-2002.

### **I. BACKGROUND**

“Elder abuse” is a generic term for a problem that takes many forms. As commonly used, and as it will be used in this Report, the term incorporates the concepts of neglect and exploitation. Statutory definitions of elder abuse generally include some or all of the following aspects of the problem: physical abuse, psychological or emotional abuse, sexual abuse, financial exploitation, neglect, abandonment, or self-neglect. However, not all state statutes include each of those categories and the definitions of those categories vary from state to state.

Elder abuse may have a particularly devastating impact. Older persons typically have fewer options for resolving or avoiding the abusive situation due to their age, health, or limited resources. They may be more vulnerable to and harmed by physical abuse because of an existing physical condition. Older persons may have less ability to recover from financial exploitation if they are already retired, have limited resources, or a short remaining life span. Moreover, research has shown that elder abuse increases mortality.

Elder abuse has been called the hidden crime. While its magnitude is not completely known, it is widely agreed that the problem affects a significant number of older persons. In 1990, the Subcommittee on Health and Long-Term Care of the House of Representatives Select Committee on Aging reported that one out of twenty older Americans may be victims of abuse each year.

The nation's elderly population is growing at a much greater rate than any other segment. As people live longer, frailty and vulnerability increase, along with the potential to become victims of abuse, neglect, and exploitation. In addition, several recent initiatives by government agencies and professional organizations and growing media attention have expanded awareness of elder abuse and fostered increased reporting of the problem to government authorities. Indeed, the National Center on Elder Abuse reports that the number of reported cases of domestic elder abuse (that which occurs in the community, rather than in a long term care facility) has risen from 117,000 in 1996 to 470,709 in 2000. Research indicates that only one in five cases is reported to authorities.

State legislatures have paid considerable attention to the problem of elder abuse. All fifty states and the District of Columbia have enacted legislation addressing domestic or institutional elder abuse, creating reporting systems to identify cases and adult protective services systems to investigate alleged incidents and respond to the needs of victims. However, the statutes vary widely in: the age at which a victim is covered; the definition of elder abuse; classification as criminal or civil; types of abuse covered; reporting requirements (mandatory or voluntary); investigation procedures; and remedies for abuse. Institutional abuse is covered by state statutes (sometimes in the same law covering domestic abuse, sometimes separately) and by federal Medicaid and Medicare statutes, which provide for state prosecution of abuse occurring in federally reimbursed facilities. Additionally, all states and the District of Columbia have laws authorizing the Long Term Care Ombudsman Program, which is responsible for advocating on behalf of long term care facility residents who are abused or who experience other problems. Finally, an increasing number of states have enacted criminal statutes and other laws that specifically address elder abuse or add to existing criminal laws enhanced penalty provisions for acts committed against older persons. Law enforcement officers, prosecutors, and civil lawyers in many jurisdictions have learned about elder abuse and the result has been a much more legalistic approach to the problem.

As the incidence of abuse and awareness of it by professionals and the public becomes even larger, this problem will demand additional attention from the criminal and civil justice systems.

## **II. DEVELOPMENT OF THE NATIONAL POLICY SUMMIT ON ELDER ABUSE AND ITS RECOMMENDATIONS**

In the last two decades, the field of elder abuse has made marked strides in understanding the service needs of victims and in designing promising approaches to meeting them. However, public policy has not kept up with these developments, very little research has been conducted, and the field is woefully under-funded.

In order to promote needed improvements in public policy related to abused and at-risk elders, the National Center on Elder Abuse (NCEA) planned and implemented a national policy summit on elder abuse. The NCEA is a grant project funded by the U.S. Administration on Aging, which is an entity of the Department of Health and Human Services. The NCEA is a consortium of six agencies. In addition to the Commission on Legal Problems of the Elderly, the partners include: the National Association of State Units on Aging (the lead agency); the National Association of Adult Protective Services Administrators; the National Committee for the Prevention of Elder Abuse; the Clearinghouse on Abuse and Neglect of the Elderly of the University of Delaware; and the San Francisco Consortium for Elder Abuse Prevention of the Institute on Aging. The Office for Victims of Crime of the Department of Justice provided additional funding for the summit.

Summit participants adopted 21 recommendations. Eleven of the recommendations are law-related. It is from those recommendations that the Commission on Legal Problems of the Elderly developed the eight actions, implementation of which it recommends that the House of Delegates adopt as Association policy.

### **III. DISCUSSION OF THE RECOMMENDED ACTIONS**

The eight actions call for a nationwide structure for supporting research, raising awareness, providing training and technical assistance, funding needed services, and coordinating resources. They urge development of a coordinated response to elder abuse by the justice system, with specialized training of that system as a necessary predicate to an improved response. They call for federal leadership in ensuring the quality of protective, legal, and other services that play a critical role in aiding victims of elder abuse. They call for states to create multidisciplinary task forces or coalitions to examine and develop systemic approaches to elder abuse interventions. They urge development, funding, and implementation of a multidisciplinary research agenda to support professional training and practice on elder abuse. They also urge expanded resources for elder abuse prevention and intervention. They support the development of adequate tools and services to enable capacity assessments of and surrogate decision-making for elder abuse victims. Finally, they call for legal and other services to be available to meet the immediate and crisis needs of elder abuse victims.

#### **The Need for National Infrastructure and Federal Leadership**

The federal government's support of the elder abuse field has been negligible compared to its commitment to child abuse and domestic violence. The elder abuse field is often described as being in the same situation that child abuse was 20-30 years ago and domestic violence was 10-20 years ago before the federal government began devoting support and resources to those issues. Indeed, while the federal government has declared domestic violence to be both a public health and a public safety problem, it has not yet taken the same approach to elder abuse. Although there are federal offices addressing child abuse and domestic violence, on May 20, 2002 the U.S. Senate Special Committee on Aging announced that there was not one federal employee working full-time on the issue of elder abuse.

The lack of federal support and leadership has led to a patchwork of state responses, with significant inequities in the response of adult protective services, the justice system, and the health care system from state to state and community to community. Focal points for policy development and oversight, funding and coordination of services, funding of research and best practices, and training and technical assistance are essential.

#### **The Need for Increased Funding and Resources**

Efforts to increase federal funding for elder abuse have been discouraging. In the last few years, Social Services Block Grant (SSBG) funds, which are used to fund adult protective services in more than 30 states, have been cut by more than one billion dollars. Approximately \$4.7 million of Older Americans Act money is devoted to elder abuse education, training and awareness, but that money is divided among the 50 states, the District of Columbia, and Puerto Rico. Its impact is largely unknown. In 2001 Congress did appropriate \$5 million under the Violence Against Women Act for training and education about older women who experience domestic violence and sexual assault but those programs are not yet funded. These amounts are a pittance compared to federal funding for child abuse and domestic violence.

## **The Need for Enhanced Training and Technical Assistance**

The effective prevention of and response to elder abuse require ongoing training of a wide array of diverse professionals who work in a variety of settings. These include adult protective services workers, other social workers and aging services providers, law enforcement personnel, prosecutors, health care and mental health professionals, civil lawyers, judges, and virtually anyone else who may come into contact with vulnerable older people. At a minimum, training needs to include the indicators of and risk factors for elder abuse, reporting requirements under state laws, and the role and responsibilities of the various professions and agencies that respond to elder abuse. It is also becoming increasingly important to have training on cultural diversity and the needs of older victims from non-majority racial and ethnic groups. Many professions, such as medical examiners and coroners, bank personnel, hospital personnel, nursing facility surveyors, law enforcement personnel, prosecutors, civil lawyers and others need specialized training.

In order to maximize resources and efficiency, technical assistance is necessary to share information about promising practices, training design, research, legal analysis, statutory drafting, etc. The field needs technical assistance so that it can avoid “re-inventing the wheel.”

## **The Need for Development and Funding of Research**

The lack of research means that no one can say with any certainty what is the incidence or prevalence of elder abuse. That is usually the first question that policy makers and the media ask about the problem. Practices and programs responding to victims have been developed without evaluation of their effectiveness. Research about the risk factors for and indicators of abuse would benefit the civil and criminal justice systems.

Several research agendas have been developed in the past and the National Academy of Sciences will soon release another. Nonetheless, very little money from the federal government or private foundations has been used to support research on elder abuse.

## **The Need for a Coordinated, Multidisciplinary Response**

The response of the civil and criminal justice, health care, and mental health systems is generally not coordinated or effective. To illustrate, elder abuse is only just beginning to be thought of as a crime, rather than a “social problem.” Law enforcement officers who have not been trained about elder abuse often refuse to write a report, make an arrest, or investigate a case, saying that it is a “civil problem.” Adult protective services workers commonly do not report cases to law enforcement until critical evidence has been destroyed. Health care professionals may not be trained to recognize elder abuse and they may not know to what agencies they should report their suspicions. While some states and communities are working hard to overcome these challenges creatively with few resources, and the federal government and a few foundations have supported training and technical assistance projects, much more is needed to develop a comprehensive system to protect vulnerable older persons from abuse, neglect, and exploitation.

## **The Need for Improved Tools to Enable Capacity Assessments and Surrogate Decision-Making**

A victim's capacity to make decisions will be critical to the protective services, civil justice, and criminal justice systems that should respond to elder abuse. Does the victim have capacity to reject an offer of protective services? Does the victim have capacity to testify in court about the abuse? Did the victim have capacity to deed real property to the suspected perpetrator? Does the victim need a guardian or conservator? Victims or potential victims of elder abuse need mental health services that are age-appropriate and specialized, including case management, victim services, long-term counseling, and substance abuse services. But such services are lacking in almost all communities.

## **The Need for Legal and Other Services to Meet the Immediate and Crisis Needs of Victims**

Victims of elder abuse face many legal and other problems. For example, victims may need help terminating the authority of an agent who is misusing a durable power of attorney or trust. They may need to prove that a deed was transferred as the result of fraud or undue influence. They may need to pursue a civil action to recoup lost assets. Victims also may need other crisis services to provide shelter, care, food, or for other needs while legal actions are pending.

## **IV. RELATED ABA POLICY**

The Association has approved numerous policy resolutions related to domestic violence and child abuse, among which are the following:

- (1) A February 1978 resolution supporting federal, state, and local efforts to combat the incidence, causes and effects of family violence and to support implementation of programs to protect victims of family violence;
- (2) An August 1978 resolution recommending the implementation of very specific potential solutions to the problem of law enforcement reaction to incidents of domestic violence;
- (3) An August 1980 resolution supporting increased efforts to prevent, identify and treat child abuse and neglect and urging Congress to support extension of the Child Abuse Prevention and Treatment Act;
- (4) An August 1981 resolution encouraging individual attorneys and state and local bar associations to work more actively to improve handling of cases involving abused and neglected children and to improve state legislation, court rules, and administrative regulations regarding all stages of proceedings in these cases;
- (5) An August 1987 resolution supporting efforts to improve judicial practices regarding guardianship and to adopt the Statement of Recommended Judicial Practices on Guardianship Proceedings for the Elderly and to encourage their implementation at the state level;
- (6) An August 1991 resolution supporting efforts to make the state judicial systems more responsive to the needs of older persons and persons with disabilities and adopting and urging implementation of the recommendations of the National Conference on the Court-Related Needs of the Elderly and Persons with Disabilities;

- (7) An August 1995 resolution encouraging support for and implementation of “Resource Guidelines: Improving the Child Abuse and Neglect Court Process” published by the National Council of Juvenile and Family Court Judges;
- (8) An August 1995 resolution urging support for and development of multidisciplinary, community programs to respond to domestic violence and recommending that any government or private entity developing multidisciplinary programs in response to domestic violence ensure that such programs contain seven specified essential elements, including (i) participation by various professionals having services to offer victims of domestic violence; (ii) coordinated information-sharing among appropriate offices to ensure that all aspects of the justice system are adequately informed about each other's action in domestic violence cases; (iii) multidisciplinary public education programs about domestic violence; (iv) multidisciplinary domestic violence prevention and intervention through employee assistance programs; (v) enhanced legal representation for victims of domestic violence and their children and expanded attorney training; (vi) data collection; and (vii) policies, procedures, and practices which place primary emphasis on the safety of the victim and the victim’s children;
- (9) A February 1996 resolution supporting educational programs designed to inform and train judges about the civil, criminal, psychological, evidentiary and procedural issues related to domestic violence and urging governmental and agency funding of such training;
- (10) An August 1996 resolution encouraging affirmative steps to educate judges and lawyers about the nature and effects of domestic violence;
- (11) An August 1996 resolution encouraging courts to ensure that counseling, treatment, advocacy and other assistance are made available to child victims of abuse and domestic violence through all available means including the imposition of fines, restitution and court orders; encourage courts, in appropriate circumstances, to require the perpetrators of child abuse and domestic violence to undergo counseling and other treatment; in those jurisdictions where courts do not presently have adequate authority to implement the recommendations, encourage the enactment of enabling legislation;
- (12) A February 1997 resolution reaffirming policy supporting increased efforts that prevent, identify and treat child abuse and neglect through the federal Child Abuse Prevention and Treatment Act and federal Adoption Assistance and Child Welfare Act, with improvements adopted by the House of Delegates;
- (13) A February 1997 resolution urging governments and entities to make the establishment of programs addressing domestic violence a priority; urging that such responses to domestic violence make victim safety a primary concern, and that such programs be developed publicly and with input from all entities and agencies having experience in handling issues of domestic violence; and urging adoption of eleven specific standards by the federal government, Congress, state legislatures and governments, and private domestic violence programs;
- (14) An August 2000 resolution encouraging legislatures to include within domestic violence statutes the same remedies, protections, and services to adolescents that are available to adults; urging educational authorities, law enforcement officials; juvenile courts; and other government agencies to support more effectively adolescent dating awareness programs, domestic violence awareness programs, adolescent victim services, and teen offender interview programs.

The instant resolution is intended to fill a niche between these policies. It builds upon an August 1996 resolution that was limited to recommendations for state courts handling cases involving elder abuse.

## **V. CONCLUSION**

The Association has taken a leadership role on the critical issues of domestic violence and child abuse and has the opportunity to do the same regarding elder abuse. Adoption of these eight actions will enhance the Association's ability to encourage federal, state, territorial and local governments and the criminal and civil justice systems to improve their response to victims of elder abuse, neglect and exploitation.

This recommendation fits squarely within Goal III of the Association's mission and goals – to provide ongoing leadership in improving the law to serve the changing needs of society. It builds upon the foundation established by existing policies on child abuse and domestic violence, extending their principles to elder abuse.

Respectfully submitted,

F. Wm. McCalpin  
Chair  
Commission on Legal Problems of the Elderly  
August 2002

## GENERAL INFORMATION FORM

Submitting Entity: **Commission on Legal Problems of the Elderly**

Submitted By: **F. Wm. McCalpin, Chair**

### 1. Summary of Recommendation(s)

This recommendation expresses the Association's support for efforts to improve the response of the federal, state, territorial and local governments and of the criminal and civil justice systems to elder abuse, neglect and exploitation. It also expresses its support for implementation by the federal, state, territorial and local governments of eight actions derived from law-related recommendations developed at the National Policy Summit on Elder Abuse, held in December 2001.

Like existing Association policy in the areas of child abuse and domestic violence, the recommendation espouses a nationwide structure for supporting research, training and technical assistance, raising public awareness, funding critical services, and coordinating resources; specialized training of the judicial system; federal leadership in the area of elder abuse; creation of state task forces or coalitions to develop systemic approaches to elder abuse interventions; development, funding, and implementation of a multidisciplinary research agenda to support professional training and practice on elder abuse; expanded resources for preventing and responding to elder abuse; development of tools and services to enable capacity assessments and surrogate decision-making for elder abuse victims; and support of legal and other services to meet the immediate and crisis needs of victims.

### 2. Approval by Submitting Entity

The Commission on Legal Problems of the Elderly approved the recommendation on April 26, 2002.

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

Generalized recommendations related to elder abuse and state judicial practices were adopted in August 1996 and August 1991. Tangentially related recommendations concerning domestic violence and child abuse were adopted in February and August 1978, August 1981, August 1987, August 1995 (2 recommendations), February 1996, August 1996, February 1997 (2 recommendations) and August 2000.

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

The Association's only policy related to elder abuse adopts and supports implementation of the "Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse" and was espoused by the House of Delegates in 1996. The Association has adopted a number of policies

related to improvements in the judicial system for cases involving child abuse and domestic violence (2/78, 8/78, 8/80, 8/81, 8/95, 2/96, 8/96, 2/97, 8/00). Moreover, the Association has policy supporting efforts to make the judicial system more responsive to the court-related needs of older persons and persons with disabilities in guardianship and other types of proceedings (8/87, 8/91). The proposed recommendation does not duplicate any of these existing policies; it is consistent with them and would not affect them.

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

National dissemination of the National Policy Summit on Elder Abuse Proceedings will begin in mid-2002. More importantly, the U.S. Senate Special Committee on Aging is developing a proposal for federal legislation on elder abuse that it intends to introduce this year. By establishing policy supporting these eight actions at the 2002 Annual Meeting, the Association can play a timely and key role in urging their implementation at the federal, state, territorial, and local levels.

6. Status of Legislation (if applicable)

There is no applicable legislation pending at the current time although, as noted in the previous section, a bill is being drafted.

7. Cost to the Association (both direct and indirect costs.)

None.

8. Disclosure of Interest. (if applicable)

None.

9. Referrals.

Simultaneously with this submission, referral is being made to:

All Sections and Divisions  
Commission on Domestic Violence

10. Contact Person. (prior to the meeting)

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## **EXECUTIVE SUMMARY**

### **Summary of the Recommendation**

Supports efforts to improve the response of federal, state, territorial and local governments and of the criminal and civil justice systems to elder abuse, neglect and exploitation. Urges implementation at the federal, state, territorial and local level of eight actions based on law-related recommendations adopted by the National Policy Summit on Elder Abuse in December 2001.

### **Summary of the Issue that the Recommendation Addresses**

In the last two decades, the field of elder abuse has made marked strides in understanding and meeting victims' needs. However, public policy has not kept up with these developments, very little research has been conducted, and the field is woefully under-funded. The federal government's support of the elder abuse field has been negligible compared to child abuse and domestic violence. The lack of federal support and leadership has led to a patchwork of state responses and efforts to increase federal funding for elder abuse have failed.

The effective prevention of and response to elder abuse require ongoing training of a wide array of diverse professionals, including law enforcement personnel, prosecutors, civil lawyers, and judges. Technical assistance is necessary to share information about promising practices, training design, research, legal analysis, statutory drafting, etc.

Research is needed to determine the incidence or prevalence of elder abuse and to evaluate programs and services. Research about the risk factors for and indicators of abuse would benefit the civil and criminal justice systems.

A victim's decision-making capacity is critical to the protective services, civil justice, and criminal justice systems that respond to elder abuse. Many victims of elder abuse are desperately in need of surrogate decision-making services.

### **Explanation of How the Proposed Policy Position Addresses the Issue**

The recommendation addresses these problems by espousing: a nationwide structure for supporting research, training and technical assistance, raising public awareness, funding critical services, and coordinating resources specialized training of the judicial system; federal leadership in the area of elder abuse; creation of state task forces or coalitions to develop systemic approaches to elder abuse interventions; development, funding, and implementation of a multidisciplinary research agenda to support professional training and practice on elder abuse; expanded resources for preventing and responding to elder abuse; development of tools and services to enable capacity assessments and surrogate decision-making for elder abuse victims; and support of legal and other services to meet the immediate and crisis needs of victims.

### **Summary of Identified Minority Views or Opposition**

No minority views or opposition have been identified. This recommendation is consistent with current Association policy on child abuse and domestic violence.