



MEASURE: HB 4084
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SUBMITTED BY: Gerald Cohen

February 1, 2012

Co-Chair Carolyn Tomei
Co-Chair Vic Gilliam
Oregon House Human Services Committee
900 Court Street NE
Salem, Oregon 97301

RE: AARP Support for House Bill 4084

Dear Co-Chairs Tomei and Gilliam:

On behalf of AARP's more than the half million members in the state of Oregon, we offer our support for House Bill 4084. AARP is a nonprofit nonpartisan membership organization of persons 50 and older dedicated to addressing our members' needs and interests. Our mission includes advocacy for promoting and sustaining dignity and independence as we age. I was honored to have served on the Elder Abuse Work Group established under HB 2325 which provided the guidance for HB 4084. Co-chaired by Representatives Gilliam and Hoyle, the Work Group drew upon the great expertise from its members, their respective organizations and various national and state experts. All deserve special recognition for their service. Attached to this letter of support is a section from AARP's Public Policy addressing Elder Abuse. We believe that HB 4084 addresses several key areas identified in our public policy and our Work Group.

Here are a few items in HB 4084 we would like to highlight:

- Clarify and tighten definition of crimes of abuse to give prosecutors a stronger ability to take action;
- Clarify and toughen "never-never" lists of persons adjudicated guilty of certain crimes from being in caregiving roles of vulnerable Oregonians;

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- Collect data on and address “root causes” of situations of harm through a Resident Safety Review Council to we can learn where systems changes can help prevent harm to residents in facilities;
- We promote public education/awareness of elements of abuse/neglect with an initial focus upon care providers and investigators; and
- We pursue federal funding to enhance our technology infrastructure and support prevention and enforcement work by the state.

We also are pleased that HB 4084 would create an Oregon Elder Abuse Work Group to continue to work on both evaluation of the work set forth as well as future needs.

AARP appreciates the opportunity to express our views on this critical matter. If you have any questions, please feel free to contact Rick Bennett, our Director of Government Affairs, at rbennett@aarp.org or by phone at 503-513-7370.

Sincerely,



Gerald J. Cohen, J.D., M.P.A.
AARP Oregon State Director

CC: Rick Bennett, AARP Oregon Director of Government Affairs
Ed Dale, AARP Senior Legislative staff, Government Affairs State team

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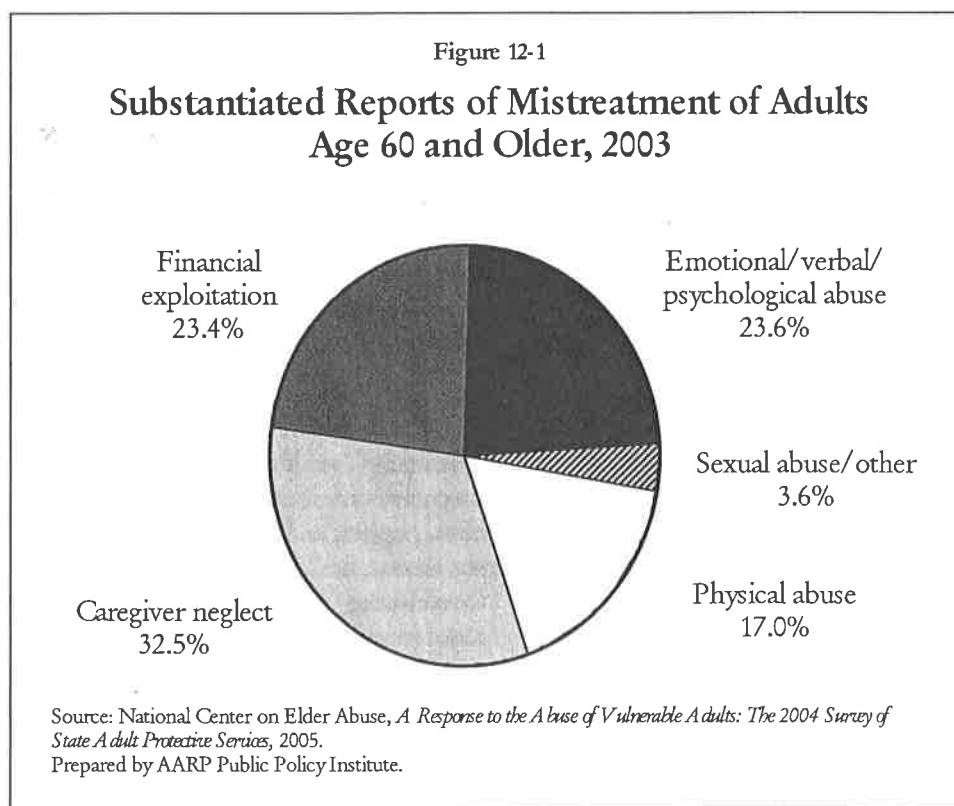
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ELDER ABUSE

Elder abuse, like many other forms of domestic abuse, is an often hidden phenomenon that affects hundreds of thousands of older Americans. State adult protective services (APS) laws generally provide safeguards for adults who cannot protect themselves from physical and emotional abuse, neglect, intimidation, or financial exploitation. Many of these statutes specifically target older people age 60 or 65 and over, but some states provide the same protections for all adults who are incapacitated or

otherwise vulnerable. A 2004 survey of state APS agencies revealed that they collectively received 565,747 reports of elder and vulnerable-adult abuse in domestic and institutional settings during fiscal year 2003. Reported cases are only the tip of the iceberg.

Elder abuse can be physical, financial, or psychological and may take place in a home or an institutional setting (Figure 12-1).



Elder abuse occurs without reference to race, religion, income, education, place of residence, or living arrangement. Because abuse commonly goes unreported, information on who is likely to suffer a particular type of abuse is unavailable. It is known, however, that physical abuse is more likely from a spouse, an adult child, or other family member than from a nonrelative. Incapacitated elders are also at risk of abuse, neglect, and exploitation by guardians, agents under durable powers of attorney, and other fiduciaries with the authority to make surrogate personal and financial decisions.

Prevention— Detecting and preventing elder abuse involves increasing awareness among the general public and professionals. In-home services, such as meals-on-wheels or home health care, are significant

in preventing and treating abuse of the frail elderly. Beyond these services essential to daily life, a broad range of protective services are needed, ranging from simple household-chore services to money management and guardianships. Community-based programs, which provide services such as counseling, information and referrals, and personal money management, can help prevent and stop abuse. Teams of multidisciplinary professionals can address elder abuse issues that cannot be effectively resolved by workers in a single field (e.g., teams of accountants, banking professionals, and attorneys can address financial abuse, while teams that include police, medical examiners, attorneys, and others can conduct retrospective review of deaths resulting from elder abuse).

Legal protection—Laws addressing elder abuse in domestic and institutional settings exist in all 50 states, the District of Columbia, Puerto Rico, the US Virgin Islands, and Guam. Typically APS laws enable protective services agencies to offer victims a variety of remedial services. In addition, statutes, which may be part of the APS law or of separate criminal laws, impose criminal penalties for various forms of elder abuse. A state’s basic criminal laws also can be used to prosecute perpetrators of abusive acts against elderly people. Some states have adopted enhanced criminal penalties to deter abuse, neglect, and exploitation of vulnerable adults. For example, some states specify that enhanced penalties apply when the vulnerable individuals are unable by reason of mental or physical incapacity to protect themselves from abuse, neglect, or exploitation or to provide for their own health, safety, or welfare. Civil and criminal actions against abusers may also deter victimization of the vulnerable.

Prosecuting alleged abusers is difficult for numerous reasons: Victims may be unable or unwilling to testify as a result of incapacity, fear, shame, or misguided loyalty, and law enforcement staff and prosecutors may lack the training, interest, and resources for these difficult cases. However, a number of states and local jurisdictions have made significant progress in introducing and implementing new techniques for investigating and prosecuting abuse cases, increasing the chances for successful prosecutions. Training for law enforcement and prosecutorial staff is a key part of this strategy (see also this chapter’s section, Criminal Justice).

Silver alerts—As many as 30 states have systems like the “AMBER alert” program for missing children. Known as “silver” or “senior” alerts, they quickly send out bulletins when a vulnerable older

person or, in some states, a younger person with a disability goes missing. They also create more awareness among law enforcement officials regarding the issues of older Americans.

Looking toward the future—AARP is concerned that in recent years Congress has not significantly increased federal resources to help states protect vulnerable adults. And some funding sources have decreased. Adequate federal support is needed for protective services for at-risk people in institutional settings, for enhancing guardianship monitoring, and for developing models for state-local coordination to prevent, identify, and treat abuse victims.

The Older Americans Act Amendments of 2006 authorizes the Department of Health and Human Services to coordinate federal elder-justice activities, which include annual data collection on elder abuse, neglect, and exploitation. The law also requires a national incidence and prevalence study. This research will contribute to the groundwork needed for policy development to prevent elder abuse and strengthen protective services. Congress has yet to authorize funds for the national incidence and prevalence study.

The Elder Justice Act (EJA) became law on March 23, 2009, as part of the Patient Protection and Affordable Care Act. The EJA is the most comprehensive federal legislation to combat elder abuse, neglect, and exploitation. Among other provisions, the EJA creates the Elder Justice Coordinating Council, made up of representatives from federal agencies that play a role in elder justice; authorizes dedicated funding for adult protective services on the state level; and authorizes grants to support the Long-Term Care Ombudsman Program.

ELDER ABUSE: Policy		
Preventing, detecting, and addressing abuse	FEDERAL STATE	<p>Congress should appropriate funds to implement all provisions of the Elder Justice Act.</p> <p>Federal agencies, including the Departments of Health and Human Services and Justice, should assist state and local agencies in preventing, detecting, and prosecuting all forms of elder abuse. These efforts should include facilitating uniform definitions of abuse, neglect, and exploitation; collecting data on abuse prevalence; providing victim assistance; and supporting training of law enforcement and judicial personnel to increase the quality of investigations and prosecutions.</p> <p>States should develop public awareness programs and expand in-home services, including respite care, to help prevent, identify, and address cases of elder abuse.</p>

<p>Adult protective services (APS)</p>	<p>FEDERAL STATE</p>	<p>States should enact, implement and fully fund adult protective services (APS) laws that apply in the community and long-term care settings and provide for:</p> <ul style="list-style-type: none"> • prompt investigation; • access to the alleged victim by agency personnel, law enforcement, and other relevant entities; • intervention in emergency and nonemergency situations of abuse, neglect, or exploitation of vulnerable individuals; • use of the least-restrictive protective action that meets the specific needs of the vulnerable individual; • a balancing of the individual’s autonomy and self-determination with the state’s need to protect those people who cannot protect themselves; and • programs for abusive family members and caregivers aimed at curbing future abuse. <p>States also should work to ensure that domestic violence and APS agencies are responsive to the particular needs of older abused spouses and partners.</p>
<p>Criminal and civil penalties</p>	<p>STATE</p>	<p>States should enact and enforce laws that:</p> <ul style="list-style-type: none"> • make it a criminal offense, with enhanced penalties, to abuse, neglect, or exploit a vulnerable individual; • provide victims and their legal representatives adequate civil procedures and remedies (including a shift in the burden of proof, award of attorney’s fees and costs, expedited hearings, and posthumous recoveries for pain and suffering) against perpetrators of abuse, neglect, or exploitation; and • make institutions liable for criminal and civil penalties for victimization of those in their care (see also Chapter 8, Long-Term Services and Supports: Quality and Consumers’ Rights Across Settings).
<p>Multidisciplinary approaches to fight elder abuse</p>	<p>STATE</p>	<p>States should support the formation and ongoing operation of multidisciplinary teams to address elder abuse issues that cannot be effectively resolved by a single discipline and train professionals from a variety of disciplines (including prosecutors, police officers, sheriffs, lawyers, employees of financial institutions, and APS agencies) to improve detection, investigation, and enforcement regarding cases of abuse, neglect, and exploitation.</p>
<p>Silver alerts</p>	<p>STATE</p>	<p>States should devise “silver alert” or similar programs only if appropriate limitations are included:</p> <ul style="list-style-type: none"> • The individual who is eligible to be the subject of an alert has been adjudicated by a court to be incapable of managing his or her own personal affairs, such as through a guardianship proceeding, or has a documented diagnosis of a mental illness, injury, or condition that causes the individual to be incapable of making personal care decisions. • The individual who initiates an alert must have one of the following relationships to the subject of the alert: be a legal guardian or close family member; live in the same household; or be a caregiver who has had very recent contact with the subject. • The alert system protects the privacy, dignity, independence, and autonomy of the subject of the alert.

Data collection on elder abuse	STATE	States should establish mechanisms to measure the occurrence of all forms of elder abuse and neglect including collection of data (such as reports to APS agencies) and incidence and prevalence studies, and address issues of cultural diversity in data collection and programs to combat elder abuse and neglect.
Social Services Block Grant and Older Americans Act programs	FEDERAL	Funding for Social Services Block Grant and Older Americans Act programs that deal with abuse must respond to the increasing number of extremely vulnerable elderly people. Additional sources of funding should be developed.