

**THE 18-BILL ELDER ABUSE LEGISLATIVE PACKAGE:
THE PRESSURE'S ON THE HOUSE**

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I. INTRODUCTION

“George Curnutt ‘pointed a gun at his father’” and pulled the trigger.¹ When the gun failed to fire, he hit his father several times with

1. Nina Santo, *Breaking the Silence: Strategies for Combatting Elder Abuse in California*, 31 MCGEORGE L. REV. 801, 802 (2000) (quoting Paul J. Pfingst, *Helping the Victims of Elder Abuse*, SAN DIEGO UNION-TRIB., May 20, 1998, at B11).

the butt of his pistol, beat, and kicked him, inflicting serious injuries.² In a separate incident, a man bought a hatchet and attempted to murder his elderly father.³ The father chose not to press charges against his son, who became a violent alcoholic after fighting in the Vietnam War.⁴ In another case, a deceased husband left his widowed wife financially well-endowed and with a nice home.⁵ Claiming they were going to renovate her house, the widow's children moved her into a nursing home.⁶ They then sold their mother's home without her knowledge, and despite her competence, a probate court granted her son durable power of attorney over her.⁷ The son also sought guardianship over his mother, depriving her of the power to make basic important life decisions.⁸

In 1981, the U.S. House of Representatives addressed the issue "of elder abuse for the first time."⁹ Nine years later, the House reviewed the matter and found little movement in solving the elder abuse problem.¹⁰ The first study to estimate incidence rates of elder abuse found "only 21% of cases were reported," and 90% of the time, family members were the perpetrators.¹¹ Little has changed since this first study was conducted.¹²

The elder-abuse problem is particularly egregious in Michigan: "Vulnerable adult abuse is one of Michigan's fastest growing crimes, with an estimated 80,000 victims each year."¹³ As family members are frequently the perpetrators and the elderly are a vulnerable class,¹⁴ traditional imposition of criminal and civil liability may be insufficient to

2. *Id.*

3. Sarah S. Sandusky, *The Lawyer's Role in Combating the Hidden Crime of Elder Abuse*, 11 ELDER L.J. 459, 460 (2003).

4. *Id.*

5. Linda S. Whitton, *Ageism: Paternalism and Prejudice*, 46 DEPAUL L. REV. 453, 453 (1997).

6. *Id.*

7. *Id.*

8. *Id.*

9. Santo, *supra* note 1, at 802.

10. *Id.*

11. Sandusky, *supra* note 3, at 462-63.

12. *Id.* at 462.

13. AREA AGENCY ON AGING OF W. MICH., *Elder Abuse Legislation Update from OSA* (Jan. 23, 2012), http://www.aaawm.org/organizational_news/20120123/Elder_Abuse_Legislation_Update_from_OSA (quoting Kari Sederberg, Director of the Michigan Office of Services to the Aging).

14. MICH. COMP. LAWS ANN. § 750.145m(u)(i) (West 2013) ("'Vulnerable adult' means . . . an individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently.").

solve the elder abuse problem.¹⁵ Nevertheless, Governor Rick Snyder, in his 2012 State of the State Address, urgently called for the Michigan House of Representatives to pass an 18-bill package approved by the Senate, which aims to help protect seniors against elder abuse by the use of traditional civil and criminal penalties.¹⁶

This Comment examines whether the Michigan House of Representatives should pass the 18-bill package, focusing on whether passage of the package will impact elder abuse in the family setting.¹⁷ This Comment touches specifically on Bills 461, 459, 463, and 464.¹⁸ Part II of this Comment summarizes the history of elder abuse laws in the United States and the origin of the 18-bill package. Part III of this Comment discusses arguments supporting and opposing the passage of particular bills as well as the 18-bill package as a whole. Finally, Part IV concludes by proposing that the House pass the 18-bill package, despite its inability to address elder abuse committed in the familial setting.

II. BACKGROUND

Elder abuse is an ignored and hidden crime.¹⁹ The problem is particularly disturbing in Michigan where “nearly 80,000 seniors have suffered, often in silence, from the torment of physical and financial abuses.”²⁰ The issue is complex because it encompasses physical, emotional, and sexual abuse, as well as financial exploitation and neglect (including self-neglect).²¹

15. Santo, *supra* note 1, at 803-04.

16. See AREA AGENCY ON AGING OF W. MICH., *supra* note 13 (“The Michigan Office of Services to the Aging (OSA) applauds Governor Rick Snyder’s urgent call for the Michigan House to pass Senate elder abuse legislation quickly.”).

17. For purposes of this Comment, elder abuse in the family setting means abuse committed by nuclear family members or spouses.

18. Since the writing of this Comment, several of the Bills were passed. See S.B. 461, 96th Leg., Reg. Sess. (Mich. 2012) (codified at MICH. COMP. LAWS ANN. § 700.2803 (West 2013)); S.B. 459, 96th Leg., Reg. Sess. (Mich. 2012) (codified at MICH. COMP. LAWS ANN. § 750.174a (West 2013)); S.B. 463, 96th Leg., Reg. Sess. (Mich. 2011) (referred to House Committee of Families, Children, & Seniors); S.B. 464, 96th Leg., Reg. Sess. (Mich. 2011) (codified at MICH. COMP. LAWS ANN. § 400.11b (West 2013)).

19. Sandusky, *supra* note 3, at 459.

20. State Sen. Tonya Schuitmaker, *Schuitmaker: Senate Approves Senior Protection Legislation* (Nov. 03, 2011), <http://www.misenategop.com/senators/readarticle.asp?id=4448&District=20> [hereinafter Schuitmaker].

21. Joseph W. Barber, *The Kids Aren’t All Right: The Failure of Child Abuse Statutes as a Model for Elder Abuse Statutes*, 16 ELDER L.J. 107, 111 (2008).

A. Defining Elder Abuse

Elder abuse is difficult to define, as each state statute defines the term differently.²² In Michigan, elder abuse can be physical, mental, sexual, or financial.²³ Bill 461 combines abuse, neglect, and exploitation into one term that can mean vulnerable adult abuse,²⁴ domestic violence,²⁵ an “act that constitutes child abuse,”²⁶ or the terms as they are defined in the Social Welfare Act.²⁷

For purposes of this Comment, all forms of abuse, neglect, and exploitation are referred to collectively as “elder abuse.”

B. Elder Abuse in the United States and Michigan

In 1981, the U.S. House Select Committee on Aging issued a report addressing elder abuse “for the first time.”²⁸ The report indicated that 25% of elderly persons²⁹ are victims of elder abuse.³⁰ The report recommended that Congress pass the “Prevention, Identification, and Treatment of Elder Abuse Act,” modeled after the 1974 Child Abuse Prevention Act.³¹ Congress failed to pass this statute, which would have given states financial assistance for the “prevention, identification, and treatment of elder abuse.”³²

22. See S.B. 461, 96th Leg., Reg. Sess. § 2802(a) (Mich. 2012).

Abuse, neglect, or exploitation means . . . any of the following: (i) An act that constitutes child abuse under section 136b of the Michigan penal code, 1931 PA 328, MICH. COMP. LAWS ANN. § 750.136b (West 2013); (ii) A criminal act that is an offense under chapter XXA of the Michigan penal code, 1931 PA 328, MICH. COMP. LAWS ANN. §§ 750.145m-750.145r (West 2013); (iii) A violation of section 174a of the Michigan penal code, 1931 PA 328, MICH. COMP. LAWS ANN. § 750.174a (West 2013); (iv) A criminal act that is an offense involving domestic violence as that term is defined in section 27b of chapter VIII of the code of criminal procedure, 1927 PA 175, MICH. COMP. LAWS ANN. § 768.27b (West 2013); (v) A criminal act that constitutes abuse, neglect, or exploitation as those terms are defined in section 11 of the social welfare act, 1939 PA 280, MICH. COMP. LAWS ANN. § 400.11 (West 2013).

Id.

23. 42 U.S.C.A. § 3002(18)(A) (West 2013).

24. MICH. COMP. LAWS ANN. §§ 750.145m-750.145n (West 2013).

25. MICH. COMP. LAWS ANN. § 768.27b (West 2013).

26. MICH. COMP. LAWS ANN. § 750.136b (West 2013).

27. MICH. COMP. LAWS ANN. § 400.11 (West 2013).

28. Sandusky, *supra* note 3, at 462.

29. “Elderly person,” for purposes of this Comment, means persons age sixty and older.

30. Sandusky, *supra* note 3, at 462.

31. *Id.*

32. *Id.*

One of the primary sources of funding for state adult protective services programs are the Social Services Block Grants (SSBG).³³ Since the 1980s, the SSBG has continuously been cut, and federal funding for state elder abuse programs is deemed "woefully inadequate."³⁴ A lack of federal funding for elder abuse programs is credited as a serious obstacle to the operation of state programs.³⁵ In 1989, compared with child abuse services, states spent on average "\$45 per child resident for child protective services," but only "\$3.80 per elder resident for adult protective services."³⁶

In 1990, the House Select Committee on Aging issued the report, "Elder Abuse: A Decade of Shame and Inaction."³⁷ As the title suggests, stagnancy characterized elder abuse legislation during the nine years following the 1981 report. Although many states implemented adult protective services programs with mandatory reporting requirements, these programs failed to address the problem.³⁸ In 1996, the National Center on Elder Abuse conducted the first study on elder abuse incidence rates.³⁹ During the study's one-year period, only 21% of elder abuse cases were reported, approximately "90% of the perpetrators" were related to the victim, "two-thirds of the perpetrators" were the victims' "adult children or spouses," and persons age eighty and older were abused and neglected two to three times more than the rest of the elderly population.⁴⁰

The elder abuse problem will continue to grow as the baby boomers, who make up 30% of the U.S. population,⁴¹ near the end of life. As Governor Snyder stated, "current laws . . . do not do enough to protect seniors."⁴² In the familial setting, elder abuse is particularly difficult to detect because of the societal attitude that elder abuse is a "private matter."⁴³

Despite the complexity of elder abuse and the difficulty of detecting it, the most significant factors influencing abuse rates include the lack of public awareness of what comprises elder abuse, the lack of public

33. *Id.* at 464.

34. *Id.* (internal quotation marks omitted).

35. *Id.* at 465.

36. Sandusky, *supra* note 3, at 464.

37. *Id.* at 462.

38. *Id.*

39. *Id.*

40. *Id.* at 463.

41. Jennifer C. Day, *Population Profile of the United States*, U.S. CENSUS BUREAU (Sept. 7, 2011), <http://www.census.gov/population/www/pop-profile/natproj.html>.

42. Schuitmaker, *supra* note 20.

43. Sandusky, *supra* note 3, at 468.

recognition that elder abuse may be a crime, and the lack of a simple method for reporting suspected abuse.⁴⁴ Changes need to be made to combat elder abuse in Michigan, paying specific attention to elder abuse in the familial setting.⁴⁵

Several Michigan statutes are already in place to protect the elderly from abuse.⁴⁶ However, current laws do too little to impact the elder abuse problem.⁴⁷ Rather, to tackle elder abuse, Michigan must also implement programs that educate the public, focus on abusers, and help victims empower themselves.⁴⁸ An important aspect of educating the public is working to eliminate ageism.⁴⁹

C. Ageism

The failure of the federal and state governments to properly address elder abuse may relate to ageism.⁵⁰ Dr. Robert N. Butler first coined the term “ageism” in 1968 when he was the director of the National Institute on Aging.⁵¹ He defined “ageism” as

a systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this with skin color and gender. Old people are categorized as senile, rigid in thought and manner, old-fashioned in morality and skills Ageism allows the younger generation to see older people

44. MICH. OFFICE OF SERVS. TO THE AGING, THE GOVERNOR’S TASK FORCE ON ELDER ABUSE 11 (Aug. 23, 2006), *available at* http://www.michigan.gov/documents/miseniors/GovTaskForce_186155_7.pdf [hereinafter TASK FORCE].

45. *See* Sandusky, *supra* note 3, at 463 (explaining that 90% of elder abuse is perpetrated by family members).

46. *See* MICH. COMP. LAWS ANN. § 700.2803 (West 2013) (preventing an heir from collecting on the estate when she “feloniously and intentionally kills” the decedent); MICH. COMP. LAWS ANN. § 750.145n (West 2013) (punishing a caregiver found guilty for vulnerable adult abuse with “imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both”).

47. Molly Dickinson Velick, *Mandatory Reporting Statutes: A Necessary Yet Underutilized Response to Elder Abuse*, 3 ELDER L.J. 165, 166 (1995). *See also* MICH. DEP’T OF HUMAN SERVS., *Mandated Reporters Are Required by Law to Report*, http://www.michigan.gov/dhs/0,4562,7-124-7119_50648_44443-157836--,00.html (last visited Jul. 12, 2012) (“Michigan Child Protection Law requires certain professionals to report their suspicions of child abuse or neglect to Children’s Protective Services (CPS) at the Department of Human Services (DHS).”).

48. Barber, *supra* note 21, at 107.

49. *Id.*

50. Whitton, *supra* note 5, at 456.

51. *Id.*

as different from themselves; thus they subtly cease to identify with their elders as human beings.⁵²

DePaul Law Professor Linda S. Whitton observed ageism when she experimented with her elder law students, observing their response to an elderly woman whose children had financially exploited her.⁵³ The elderly woman's children placed her in a nursing home and sold her home without her knowledge.⁵⁴ The woman was competent and able to live on her own; however, her son gained durable power of attorney and sought guardianship over her.⁵⁵ When Professor Whitton asked her students to advise this woman, the students commonly suggested finding her a "nice apartment" where she would be surrounded by others and less likely to become depressed (her husband recently died).⁵⁶ Some students suggested acquiescing to the guardianship proceeding; whereas, others settled on negotiating for limited guardianship should she "fall off the wagon."⁵⁷

Then, Professor Whitton asked the students to reconsider the same scenario, changing one fact: the woman was age thirty-five rather than seventy years old.⁵⁸ Changing this fact, students' attitudes changed.⁵⁹ Rather than admitting her to a nursing home, students suggested that she receive psychological counseling or rehabilitation services.⁶⁰ Recommending that the woman "give up her home" for grief-related symptoms was considered unreasonable, and if her lawyer recommended giving up her home, unconscionable.⁶¹ This experiment illustrates that ageism may underlie how the elderly are treated in the legal system.

In 1998, Dr. Butler observed that manifestations of ageism include "both envy and resentment of the elderly—envy of affluent elderly for their economic successes and resentment of poor elderly for their ostensible burden on public benefits and tax expenditures."⁶² Difficult to define, tests measuring ageism have shown nothing concrete, but only that ageism is an "elusive and complex phenomenon."⁶³

52. *Id.*

53. *Id.* at 454-55.

54. *Id.* at 454.

55. *Id.*

56. Whitton, *supra* note 5, at 454.

57. *Id.* at 455.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Whitton, *supra* note 5, at 456-57.

63. *Id.* at 457.

D. Family Members as Perpetrators

Elder abuse committed by family members is not rare.⁶⁴ One reason family members abuse their elders is family stress.⁶⁵ Family members who take elders under their wing often underestimate the amount of work it takes to care for an elder.⁶⁶ Further, unaddressed issues from childhood may resurface.⁶⁷ Financially, an elder relative living with the family can be draining: elderly persons are living longer than ever, and the older the person becomes, the less able she is to contribute to the household budget or maintenance.⁶⁸ Family members can become frustrated, believing that “the elder is not pulling” her weight, which can make the elder an easy target for abuse.⁶⁹

Another factor is caregiver stress.⁷⁰ If the caregiver is emotionally or mentally ill, addicted to drugs, or personally stressed, then she is more likely to abuse an elderly person.⁷¹ The additional stress of caring for an elder can lead to frustration, hostility, and anger, leading a caregiver to resort to physical force.⁷² Physical violence may also be the only way that the caregiver knows how to cope with high stress situations.⁷³

A third contributing factor is “domestic violence grown old.”⁷⁴ In this case, the abuse is unrelated to caregiver stress; the abuser uses power and control to get what she wants.⁷⁵ Elder abuse may also be the result of “battered child grown old.”⁷⁶ A child whose parent is elderly may retaliate against her parents for years of child abuse.⁷⁷

E. The 18-Bill Elder Abuse Package

In November 2011, the Michigan Senate approved an 18-bill package⁷⁸ that aims to protect Michigan’s elderly, encourage elder abuse

64. Sandusky, *supra* note 3, at 467.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Sandusky, *supra* note 3, at 467-68.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. Sandusky, *supra* note 3, at 467-68.

77. *Id.*

78. S.B. 461, 96th Leg., Reg. Sess. (Mich. 2012).

reporting, and strengthen penalties for elder abuse convicts.⁷⁹ The package's success is due in large part to the efforts of elder abuse reform advocates, such as the Michigan Office of Services to the Aging.⁸⁰ This Comment touches on the following bills of the 18-bill package: 459, 461, 463, and 464.

III. ANALYSIS

A. The Legislature is the Appropriate Venue for Addressing Elder Abuse in the Familial Setting

Bill 461 proposes to amend the Michigan "slayer" statute to punish, in addition to those who murder the decedent, those "convicted of committing abuse, neglect, or exploitation with respect to the decedent."⁸¹ A person convicted of these crimes would "forfeit[] all benefits . . . with respect to the decedent's estate."⁸²

The legislative branch is the appropriate venue to implement Bill 461.⁸³ Traditionally, legislatures hesitate to "move[] boldly" in the area of disinheritance, reflecting a government's "general reluctance" to interfere with family matters.⁸⁴ This reluctance may stem in part from the belief that criminal law, not the probate code, is the appropriate authority to apply when addressing misconduct.⁸⁵

To adequately address elder abuse, however, the scope of laws must transcend criminal punishments to include civil penalties as well.⁸⁶ When an heir is convicted of murder, abuse, neglect, or exploitation of an elder, the judge should be given the discretion to tailor an heir's ability to inherit "based on the facts of the particular case."⁸⁷ To comprehensively address elder abuse requires focusing on abusers, which Bill 461 does by penalizing undeserving heirs.

79. Schuitmaker, *supra* note 20.

80. MICH. OFFICE OF SERVS. TO THE AGING, *Michigan Senate Heralded for Elder Abuse Legislation* (Nov. 07, 2011), <http://www.michigan.gov/mdch/0,4612,7-132--265208--,00.html>.

81. S.B. 461, 96th Leg., Reg. Sess. § 2803(1) (Mich. 2012).

82. *Id.*

83. Anne-Marie Rhodes, *Consequences of Heirs' Misconduct: Moving from Rules to Discretion*, 33 OHIO N.U. L. REV. 975, 977 (2007).

84. *Id.*

85. *Id.*

86. See Shelby A.D. Moore & Jeanette Schaefer, *Remembering the Forgotten Ones: Protecting the Elderly from Financial Abuse*, 41 SAN DIEGO L. REV. 505, 525 (2004) ("Society benefits if we criminalize abuse of the elderly [because] [t]he criminal law's scope is broader than the sanctions offered by civil law.").

87. Rhodes, *supra* note 83, at 978.

In addition to civil penalties, criminal penalties should also be imposed on family members and spouses who abuse an elderly adult.⁸⁸ Bill 459 amends the Michigan Penal Code to enhance penalties for persons who “through fraud, deceit, misrepresentation, coercion, or unjust enrichment obtain or use or attempt to obtain or use a vulnerable adult’s money or property to directly or indirectly benefit that person knowing or having reason to know the vulnerable adult is a vulnerable adult.”⁸⁹ The Bill increases the maximum possible penalty from a felony punishable by ten years in prison to a felony punishable by twenty years in prison, depending on the amount of money or property taken and the defendant’s prior criminal history.⁹⁰ The Bill also increases the maximum possible fine for convicted felons from \$15,000 to \$50,000, also depending on the amount of money or property taken and the defendant’s prior criminal history.⁹¹

To comprehensively address elder abuse, criminal penalties for abusers should be increased.⁹² Bill 459 increases the maximum prison penalty and fine.⁹³ Because financial abuse may be the most commonly committed form of abuse against the elderly, Bill 459 criminally punishes wrongdoers in accordance with a comprehensive approach to elder abuse.⁹⁴

B. Bill 461 Fails to Align with the Objective of Punishing Wrongdoers

Senator Tonya Schuitmaker sponsored several of the Senate package’s eighteen bills, including Bill 461.⁹⁵ She explained the objective of the 18-bill package as spotlighting “criminal acts and bring[ing] their perpetrators to justice.”⁹⁶ This objective aligns with a comprehensive approach to the elder abuse problem.⁹⁷ By foreclosing

88. Moore & Schaefer, *supra* note 86, at 525.

89. S.B. 459, 96th Leg., Reg. Sess. § 174a(1) (Mich. 2012).

90. *Id.* § 174a(7).

91. *Id.* § 174a(5)(a).

92. Barber, *supra* note 21, at 131 (“[C]riminal laws should increase the penalties for elder abuse.”).

93. S.B. 459, 96th Leg., Reg. Sess. § 174a.

94. See Charles Pratt, *Banks’ Effectiveness at Reporting Financial Abuse of Elders: An Assessment and Recommendations for Improvements in California*, 40 CAL. W. L. REV. 195, 195 (2003) (explaining that financial elder abuse may be the most common type of elder abuse committed).

95. Schuitmaker, *supra* note 20.

96. *Id.*

97. Barber, *supra* note 21, at 109, 131.

elder abuse convicts from benefitting from a decedent's estate,⁹⁸ Bill 461 "focus[es] on the abusers" and therefore "treat[s] elder abuse in the manner it deserves."⁹⁹

However, several problems may arise out of Bill 461's efficacy. First, the bill's retributive objective of spotlighting "criminal acts and bring[ing] their perpetrators to justice"¹⁰⁰ may not be attainable.¹⁰¹ This objective facially serves retributive ideals, but closer examination reveals that the Bill may fail to punish wrongdoers.

One reason that Bill 461 may fail to punish wrongdoers is that seniors tend to be socially isolated.¹⁰² In comparison to children and independent adults, dependent elderly adults often lack outside contacts and social communications.¹⁰³ When state legislatures created elder abuse reporting requirements in the 1980s, they erroneously modeled them after child abuse reporting requirements.¹⁰⁴ Due to children and seniors' differing behavioral styles, reporting elder abuse is more difficult than reporting child abuse. Children are inherently energetic and engage in social activities.¹⁰⁵ They must attend school where they interact with others.¹⁰⁶ Further, they are more likely to visit a doctor due to the accidents and sicknesses that accompany childhood.¹⁰⁷ Elderly adults, on the other hand, have no mandatory schooling to compel social interaction.¹⁰⁸ They may remain at home without legal ramifications.¹⁰⁹ Lack of nearby friends and family can exacerbate their social isolation.¹¹⁰ Sometimes an elderly adult's caregiver is the abuser and the only person with whom the senior interacts.¹¹¹ Because children have more social contacts, there is a greater chance that third parties will detect child abuse.¹¹² Conversely, because seniors are more socially isolated, there is

98. S.B. 461, 96th Leg., Reg. Sess. § 2803(1) (Mich. 2012) ("An individual who feloniously and intentionally kills or who is convicted of committing abuse, neglect, or exploitation with respect to the decedent forfeits all benefits . . . with respect to the decedent's estate.").

99. Barber, *supra* note 21, at 131.

100. Schuitmaker, *supra* note 20.

101. *Id.*

102. Barber, *supra* note 21, at 114.

103. *Id.*

104. *Id.* at 107, 115-16.

105. *Id.* at 121.

106. *Id.*

107. *Id.*

108. Barber, *supra* note 21, at 107.

109. *Id.*

110. *Id.* at 121.

111. *Id.* at 114.

112. *Id.* at 121.

a lesser chance third parties will detect elder abuse.¹¹³ As a result, social isolation can frustrate the detection and conviction of abusers.¹¹⁴ Third parties are simply less likely to witness the abuse or its effects on elders. Therefore, Bill 461 may fail to punish wrongdoers, except in blatant, extreme cases. Wrongdoer retribution, therefore, may be a nominal objective.

Another reason that Bill 461 may fail to punish wrongdoers is that elder abuse is viewed as a "private matter" in the familial context. If a third party witnesses abuse, the societal attitude is not to interfere with the family's private life.¹¹⁵ Not only will third parties ignore signs of elder abuse, but victims themselves will fail to report the abuse that they are experiencing,¹¹⁶ viewing it as a "private problem."¹¹⁷

Further, psychological reasons may explain why a victim of elder abuse will fail to report the abuse.¹¹⁸ Four primary psychological reasons are (1) "power and control," (2) "denial," (3) "family and economic reasons," and (4) "emotional attachment."¹¹⁹ First, an abuser may exert control through verbal and physical acts of "abuse, threats, and economic and social isolation."¹²⁰ This control places the victim in a "perpetual 'state of siege.'"¹²¹ Second, a victim may deny the existence of abuse to maintain some sense of control and to mitigate the emotional pain; denial is a form of self-defense for victims of abuse.¹²² Third, an abuser often retains financial control over the victim, which has the effect of trapping the victim in the relationship.¹²³ When the abuser is a relative, the victim may feel judged by her "family and society in addition to" the feeling of enormous guilt.¹²⁴ Lastly, "when the abuser is a family member" or friend, the victim may feel attached to, and protected by, the abuser.¹²⁵ These psychological mechanisms, as well as the societal attitude that elder abuse is a private matter, may impede Bill 461's ability to punish

113. *Id.*

114. Barber, *supra* note 21, at 121.

115. See Sandusky, *supra* note 3, at 468 ("Our society views family life as a very private aspect of our lives, and thus it is hard to expose all the intimate details of that family life to the public eye.").

116. *Id.* ("Elders believe that domestic abuse is a private problem that should be dealt with privately.").

117. *Id.*

118. Barber, *supra* note 21, at 124.

119. *Id.*

120. *Id.* at 124-25.

121. *Id.* at 124.

122. *Id.* at 125.

123. *Id.*

124. Barber, *supra* note 21, at 125.

125. *Id.*

wrongdoers. As a result, both third parties and victims fail to report abuse.¹²⁶

C. Ageism and Broad Statutory Definitions May Impede Bill 461's Efficacy

Bill 461 also purports other objectives that may be unattainable.¹²⁷ The October 19, 2011 Committee Summary suggests that the bill would "[p]revent a person from benefiting from the estate of a decedent if the person were convicted of abuse, neglect, or exploitation."¹²⁸ However, issues such as ageism make conviction of elder abuse, neglect, or exploitation difficult to achieve. In some cases, for example, courts have enforced financial exploitation of an elderly adult rather than precluded it, in part because of ageist attitudes.¹²⁹

In *In re Conservatorship of Townsend*,¹³⁰ the Michigan Court of Appeals held that the probate court incorrectly found Kathryn Townsend, an older woman, a "vulnerable adult" within the meaning of section 700.5401(3)(a) of the Michigan Compiled Laws.¹³¹ Ms. Townsend's son petitioned the probate court to appoint a conservator to manage Ms. Townsend's funds.¹³² The son asserted that his mother suffered from "diminished mental capacity," could not properly manage her property, and, as a result, her property would "be wasted or dissipated."¹³³ Although Ms. Townsend loaned a substantial amount of money to her children after her husband's death,¹³⁴ her physician testified that she "scored a perfect 30 out of 30 on a mini mental-status examination."¹³⁵ This meant she was "a normal human being as far as her thought [went]."¹³⁶ In fact, her physician believed that her mental capacity was "above average" and that she could definitively "manage her property

126. Sandusky, *supra* note 3, at 468.

127. S. COMM. ON FAMILIES, SENIORS, & HUMAN SERVS., S.B. 461 (S-2) COMM. SUMMARY (Oct. 19, 2011), available at <http://www.legislature.mi.gov/documents/2011-2012/billanalysis/Senate/pdf/2011-SFA-0461-S.pdf>.

128. *Id.*

129. MICH. OFFICE OF SERVS. TO THE AGING, *Ageism*, <http://www.michigan.gov/miseniors/0,4635,7-234-43293-182919--,00.html> (last visited Apr. 6, 2012) (emphasis added).

130. 809 N.W.2d 424 (Mich. Ct. App. 2011).

131. *Id.* at 429.

132. *Id.* at 425-26.

133. *Id.* at 426.

134. *Id.*

135. *Id.* (internal quotation marks omitted).

136. *In re Conservatorship of Townsend*, 809 N.W.2d at 426 (internal quotation marks omitted).

and business affairs.”¹³⁷ Regarding physical capacity, “there was no evidence that Townsend suffered from a . . . physical illness or disability.”¹³⁸

Nonetheless, the probate court granted the son’s petition for conservatorship,¹³⁹ despite the fact that Ms. Townsend did not qualify as being “unable to manage [her] property and business affairs effectively.”¹⁴⁰ The court was apparently concerned with Ms. Townsend’s “inability to say no.”¹⁴¹ The court further opined that Ms. Townsend would “give money to any child who asks for it whether it is in her best interests or not.”¹⁴² By substituting its own judgment for Ms. Townsend’s, the court took a paternalistic stance normally relegated to legally incompetent persons, despite evidence not only showing Ms. Townsend’s mental and physical competence, but also her above average mental capacity.¹⁴³ Although the Michigan Court of Appeals ultimately reversed the ruling, the probate court’s decision reflects the pervasive ageism that allows perpetrators to take advantage of seniors.¹⁴⁴ Ageism within the judicial system, therefore, may present an obstacle to Bill 461’s efficacy.

In re Conservatorship of Townsend shows the difficulty of preventing elder abuse.¹⁴⁵ The probate court appears to have rendered Ms. Townsend incompetent based solely on her age.¹⁴⁶ In addition to ageism, the broad definition of “vulnerable adult”¹⁴⁷ opens the doors for courts to make “subjective and ad hoc determinations of capacity.”¹⁴⁸ Michigan’s penal code defines “vulnerable adult” as “an individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently.”¹⁴⁹ This definition is disturbing because a court’s finding that a person is a

137. *Id.*

138. *Id.*

139. *Id.*

140. See MICH. COMP. LAWS ANN. § 700.5401(3)(a) (West 2013).

141. *In re Conservatorship of Townsend*, 809 N.W.2d at 427.

142. *Id.* (internal quotation marks omitted).

143. *Id.* at 426.

144. See Audrey S. Garfield, *Elder Abuse and the States’ Adult Protective Services Response: Time for a Change in California*, 42 HASTINGS L.J. 859, 878 (1991) (explaining that implementing reporting requirements “solely on the basis of advanced years . . . infantilizes elders and encourages the already pervasive ageism in our society”).

145. *In re Conservatorship of Townsend*, 809 N.W.2d 424.

146. *Id.* at 428.

147. See *id.* at 429.

148. *Id.*; Garfield, *supra* note 144, at 899.

149. MICH. COMP. LAWS ANN. § 750.145m(u)(i) (West 2013).

“vulnerable adult” may occur if the court finds that the person is physically disabled but mentally competent.¹⁵⁰ A court may also find that a person qualifies as a “vulnerable adult” if it finds that she is vulnerable solely “because of age.”¹⁵¹ A court’s finding that a person is a “vulnerable adult” may lead to the imposition of guardianships or, in the case of *In re Conservatorship of Townsend*, conservatorships.¹⁵² Guardianships and conservatorships “not only strip elders of the right to make basic choices regarding daily living, but deny them the right to make more important life choices and ultimately diminish, if not extinguish, their fundamental rights to self-determination.”¹⁵³ Thus, in addition to ageism, broad definitions may impede the efficacy of Bill 461 and the 18-bill package as a whole.

While ageism may hinder the prosecution and conviction of elder abusers, Bill 461 might mitigate this hindrance by expanding section 2803(6).¹⁵⁴ This affords interested persons the opportunity to petition the court for a separate determination of liability in the civil context.¹⁵⁵ Section 2803(6) states,

With respect to a claim of felonious and intentional killing, in the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent.¹⁵⁶

If this section were amended to include abuse, neglect, and exploitation, then if a person were suspected of misconduct but not convicted, an interested person could petition the court for a separate determination of liability.¹⁵⁷ Amending section 2803(6) to include abuse, neglect, and exploitation would mitigate the burden of conviction by lowering the standard of proof from beyond a reasonable doubt, the most stringent standard, to preponderance of the evidence, the most lenient standard.¹⁵⁸ If the court found the suspect liable, the wrongdoer would be punished under Bill 461 as if he had been criminally convicted, which would serve

150. *Id.*

151. *Id.*

152. See *In re Conservatorship of Townsend*, 809 N.W.2d 424.

153. Garfield, *supra* note 144, at 899.

154. S.B. 461, 96th Leg., Reg. Sess. § 2803(6) (Mich. 2012).

155. *Id.*

156. *Id.*

157. See *id.*

158. *Id.*

the Bill's retributive objective of punishing wrongdoers.¹⁵⁹ Further, allowing a second determination of liability might mitigate the obstacles created by ageism.

On the other hand, expanding section 2803(6) may overwhelm probate courts and, therefore, become practically unfeasible. However, this concern is less applicable because petitioning for a separate determination of liability is not a simple feat. First, a criminal court must have already failed to convict the suspected abuser.¹⁶⁰ In many instances, states fail to prosecute suspected elder abusers in the first place; "prosecution for crimes involving abuse, neglect, and exploitation are relatively infrequent."¹⁶¹ There are a host of reasons why prosecutors fail to reprimand abusers, including the pervasive belief that "older persons are not credible . . . witnesses."¹⁶² Therefore, amending section 2803(6) to include abuse, neglect, and exploitation would be unlikely to clog the courts unless the attitude for prosecuting elder abuse contemporaneously changes. Thus, amending section 2803(6) to include abuse, neglect, and exploitation would provide an additional means of punishing wrongdoers.

The current slayer statute, Bill 461, and case law do not define "interested person."¹⁶³ In order to foster consistent application of this bill, legislators should define "interested person" and clarify who can petition the court for a second determination of liability.

159. *Id.*; S. COMM. ON FAMILIES, SENIORS, & HUMAN SERVS., *supra* note 127.

160. S.B. 461, 96th Leg., Reg. Sess. § 2803(6) (Mich. 2012).

161. Margaret M. Landrey & Monique C.M. Leahy, *Proof of Elder Abuse in Civil and Criminal Actions*, 118 AM. JUR. 3D *Proof of Facts* § 18 (2011).

162. *Id.*

Possible reasons for why few prosecutions are brought include the reluctance of older persons to report the incident or press charges, especially if the perpetrator is a family member; the fact that the immediate harm may have been removed through the intervention of adult protective services; the difficulty some older persons have in participating in a criminal trial due to physical frailty; the frequent lack of supporting evidence in such cases; and the view of some prosecutors that some older persons are not credible as witnesses due to physical limitations or loss of memory.

Id.

163. MICH. COMP. LAWS ANN. § 700.2803 (West 2013); S.B. 461, 96th Leg., Reg. Sess. (Mich. 2012). *See, e.g., In re Estate of Summerfield*, No. 226069, 2002 WL 409019 (Mich. Ct. App. Mar. 15, 2002).

D. The Policies Underlying Murder Are Inconsistent with the Policies Underlying Abuse, Neglect, and Exploitation

Another problem with Bill 461 stems from grouping the crimes of abuse, neglect, and exploitation into the same category as murder.¹⁶⁴ The policies underlying the prohibition of murder are distinct from those underlying the prohibition of abuse, neglect, and exploitation. Under American inheritance law, the decedent's intent dictates who inherits what portion of the decedent's estate.¹⁶⁵ This intent is either verbalized in a written instrument or dictated by a state's intestacy laws. However, when the decedent is murdered, American inheritance law takes a backseat, and the decedent's intent is ignored.¹⁶⁶ This is because society's interest in prohibiting murder overrides the decedent's interest in distributing her estate according to her wishes.¹⁶⁷ Murder threatens the "safety and stability of all," and murder that results in pecuniary gain is "destructive of legal order."¹⁶⁸ Simply put, it "cannot be tolerated."¹⁶⁹ Therefore, if the decedent is murdered, her intent is irrelevant; "[s]ociety's interest drowns out the decedent's particular voice."¹⁷⁰

On the other hand, unlike in the instance of murder, the decedent's intent should be given weight when abuse, neglect, or exploitation occurs. When a decedent's heir is convicted of these less severe crimes, the heir should be allowed to benefit from the decedent's estate under certain circumstances. This is because abuse, neglect, and exploitation do not rise to murder's heightened stature.¹⁷¹ These forms of misconduct fail to directly threaten society.¹⁷² Unlike murder, which ends the senior's life in an isolated incident, abuse, neglect, and exploitation generally occur as a "course of conduct over time."¹⁷³ Theoretically, this time lapse "allows the aggrieved party time to evaluate, perhaps even reconcile, and then set forth her own dispositive wishes."¹⁷⁴ Therefore, Bill 461 should allow those convicted of abuse, neglect, or exploitation to benefit from the decedent's estate under certain circumstances. By grouping abuse,

164. Rhodes, *supra* note 83, at 987.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. Rhodes, *supra* note 83, at 988.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

neglect, and exploitation into the same category as murder, Bill 461 may fail to properly conform to its diverging, underlying policies.

However, section 2803(7) of the Bill may resolve the diverging policies dilemma.¹⁷⁵ Section 2803(7) states that a person convicted of abuse, neglect, or exploitation does not forfeit all benefits with respect to the decedent's estate if the "decedent executed a governing instrument after the date of the conviction expressing a specific intent to allow the felon to inherit or otherwise receive the estate or property of the decedent."¹⁷⁶ Thus, section 2803(7) allows the victim to re-evaluate her wishes and include the abuser as an heir, if she so chooses.¹⁷⁷ As a result, section 2803(7) may solve the differing policies dilemma.¹⁷⁸

Nevertheless, section 2803(7) may give abusers the opportunity to further exploit the elder. Common examples of financial abuse include "forcing someone to sign a power of attorney[] and unauthorized check cashing."¹⁷⁹ A person capable of forcing an elder to sign a power of attorney is certainly capable of forcing an elder to sign a governing instrument specifically allowing the felon to inherit. Thus, a governing instrument executed under section 2803(7) may fail to reflect the decedent's actual wishes and may allow an abuser to unlawfully benefit from the decedent's estate.

E. Bill 461 May Be Unnecessary Given Other Michigan Statutes

Another critique of Bill 461 is that Michigan already has statutes in place protecting the elderly population against abuse. Michigan's domestic violence laws are one source of protection for the elderly.¹⁸⁰ Joseph Barber suggests that elder abuse should be treated like domestic violence because the "same dynamics present in domestic violence are at work in [the] elder abuse setting[]." ¹⁸¹ "[M]ost cases of elder abuse" are characterized by a cycle of violence, and the exertion of power and control over the victim.¹⁸² Similar to domestic abusers, elder abusers keep their victims in a "perpetual 'state of siege' through physical and nonphysical acts of abuse, threats, and economic and social isolation."¹⁸³ Akin to victims of domestic violence, many victims of elder abuse want

175. See S.B. 461, 96th Leg., Reg. Sess. § 2803(7) (Mich. 2012).

176. *Id.*

177. *Id.*

178. *Id.*

179. Barber, *supra* note 21, at 112.

180. MICH. COMP. LAWS ANN. § 768.27b (West 2013).

181. Barber, *supra* note 21, at 124.

182. *Id.*

183. *Id.*

the abuse kept private to avoid embarrassment and interference with their personal life.¹⁸⁴

Michigan's current domestic violence laws may do a better job of treating elder abuse in the familial context than any of the bills in the 18-bill elder abuse package. Rather than pass eighteen more laws, legislators may want to expand certain domestic violence provisions. For example, legislatures may want to expand section 400.1507 of the Michigan Compiled Laws to include shelter programs that cater to the elderly.¹⁸⁵ Most domestic violence shelters allow elders in, but most elders end up leaving fairly quickly, "within three days," because the shelters cater to young women and children.¹⁸⁶

Though domestic violence laws may provide a source of protection for the elderly against abuse, one statute alone cannot comprehensively address the issues involved in elder abuse. Bill 461 and the 18-bill package as a whole should pass to supplement Michigan's current laws protecting against elder abuse.

Another source of protection for Michigan's elders is codified in the penal code.¹⁸⁷ Section 750.145n of the Michigan Penal Code prohibits "vulnerable adult abuse" by a caregiver.¹⁸⁸ Vulnerable adult abuse occurs when the caregiver intentionally or recklessly "causes serious physical harm or serious mental harm to a vulnerable adult."¹⁸⁹ This statute may sufficiently address elder abuse in the family setting because a victim's caregiver is frequently a family member.

In *People v. Jefferson*, the Michigan Court of Appeals held that the jury below correctly found Defendant Tammy Jefferson guilty of second-degree vulnerable adult abuse.¹⁹⁰ The defendant failed to bathe the victim and change her diapers.¹⁹¹ As a result, the victim's skin on her buttocks "sloughed off."¹⁹² The victim's home developed an odor of urine and feces.¹⁹³ In addition, bedsores adorned the victim's body in 2007 and remained there until her death in March 2009.¹⁹⁴ At the time of her death, the victim weighed sixty-five pounds; a pathologist observed that she

184. *Id.*

185. MICH. COMP. LAWS ANN. § 400.1507 (West 2013).

186. Sandusky, *supra* note 3, at 470.

187. MICH. COMP. LAWS ANN. § 750.145n (West 2013).

188. *Id.*

189. *Id.*

190. No. 297790, 2011 WL 2859814, at *1 (Mich. Ct. App. July 19, 2011), *appeal denied*, 490 Mich. 912 (2011).

191. *Id.*

192. *Id.* (internal quotation marks omitted).

193. *Id.*

194. *Id.*

appeared to have been starved.¹⁹⁵ Despite the victim's state, the "defendant never took the victim to see a doctor."¹⁹⁶

To prove that a defendant is guilty of second-degree vulnerable adult abuse, the prosecution must prove four elements: "the defendant was a caregiver," "the victim was a vulnerable adult," the defendant had been reckless, and causation.¹⁹⁷ Two elements were clearly established: the defendant was a caregiver and the victim was a vulnerable adult.¹⁹⁸ The court also found that the defendant had been reckless because the caregiver's conduct demonstrated a "deliberate disregard for the likelihood of serious physical harm that the victim would suffer as a result of her failure to act."¹⁹⁹ In addition, the court found that the caregiver's conduct was the actual cause of the victim's death because, but for the defendant's conduct, "the victim would not have died."²⁰⁰ Likewise, the court found the defendant's conduct was the proximate cause of the victim's death because it was "reasonably foreseeable that [the] defendant's [conduct] would cause the victim's death."²⁰¹

This case shows the effectiveness of this statute in a case of extreme neglect. However, elder abuse is oftentimes subtler. Thus, other forms of protection should supplement Michigan's vulnerable adult abuse statute to account for subtler cases of abuse.

A third source of protection for Michigan's elderly falls under Michigan's Social Welfare Act. Section 400.11a of the Michigan Compiled Laws promulgates mandatory reporting requirements for the following:

A person who is employed, licensed, registered, or certified to provide health care, educational, social welfare, mental health, or other human services; an employee of an agency licensed to provide health care, educational, social welfare, mental health, or other human services; a law enforcement officer; or an employee of the office of the county medical examiner²⁰²

This statute requires these persons to "immediately" report that an "adult has been abused, neglected, or exploited" to "the county department of social services of the county in which the abuse, neglect, or exploitation

195. *Id.*

196. *Jefferson*, 2011 WL 2859814, at *1.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. MICH. COMP. LAWS ANN. § 400.11a(1) (West 2013).

is suspected of having . . . occurred.”²⁰³ Senate Bill 463 amends section 400.11 of the Michigan Compiled Laws to require persons to report “financial exploitation.”²⁰⁴ Bill 463 also amends section 400.11a, requiring financial institutions to train its employees “on how to identify suspected financial exploitation.”²⁰⁵

Despite these seemingly positive changes to the statute, mandatory reporting requirements have been criticized since the 1990s as an ineffective mode of treating elder abuse.²⁰⁶ States enacted mandatory reporting requirements in the 1980s, modeled after child abuse reporting requirements.²⁰⁷ However, elder abuse and child abuse are different. Mandatory reporting requirements have failed to identify elder abuse because, unlike children, elders are socially isolated and legally competent.²⁰⁸ Also, unlike child abuse, elder abuse is more difficult to diagnose and more closely resembles domestic violence.²⁰⁹ Further, mandatory reporting requirements are simply inappropriate for the elderly. They implicitly assume that victims of elder abuse lack self-determination.²¹⁰ The result is that a “well-intentioned social worker” will substitute her own judgment for that of the elderly person.²¹¹ “As one scholar observed, if . . . society allow[s] adults to stand by their beliefs and choices in life-and-death situations, why would society force state action in situations that are not directly life threatening?”²¹²

On the other hand, the only way to treat the elder abuse problem is if it is reported. Though mandatory reporting requirements are imperfect, they provide part of the solution to the problem. As Michigan’s mandatory reporting requirements alone are insufficient to treat elder abuse, the House should pass the 18-bill package to supplement Michigan’s current laws.

203. *Id.*

204. S.B. 463, 96th Leg., Reg. Sess. § 11 (Mich. 2011).

205. *Id.* § 7.

206. See Sandusky, *supra* note 3, at 462 (“Despite . . . mandatory reporting and adult protective services laws, only one out of eight cases of elder abuse is reported . . .”).

207. Barber, *supra* note 21, at 118.

208. *Id.* at 121-22.

209. *Id.* at 120.

210. *Id.* at 122.

211. *Id.*

212. *Id.* at 123.

F. A Multi-Disciplinary Approach to Elder Abuse

Bill 461 punishes heirs who are convicted of elder abuse.²¹³ Bill 459 enhances criminal penalties for persons convicted of financial exploitation.²¹⁴ Bill 463 expands reporting requirements to include financial exploitation.²¹⁵ Because “no one . . . service system is sufficient for understanding and addressing”²¹⁶ elder abuse, Bill 464 complements the 18-bill package by mandating the creation of a protocol for investigating elder abuse.²¹⁷

Bill 464 would amend the Social Welfare Act to require a representative from each of the following groups to “meet and develop a state model protocol for the investigation of vulnerable adult abuse cases”: the Department of Human Services, the Michigan State Police Department, the Office of the Attorney General, and the Office of Services to the Aging, as well as an “individual who is a representative of long-term care providers and is designated by the state attorney general.”²¹⁸ These representatives would be required to develop a protocol “not more than 1 year after the effective date of the amendatory act.”²¹⁹ Further, once the model protocol is developed, a “county prosecuting attorney, in cooperation with the local county department and local law enforcement agencies,” would be able to “adopt a local protocol for the investigation of vulnerable adult abuse cases . . . based on the state model protocol.”²²⁰

By mandating these groups to create a model protocol, Bill 464 would catalyze the formation of a uniform protocol to implement throughout the State of Michigan. This would foster consistency throughout elder abuse investigations.

IV. CONCLUSION AND SOLUTIONS

Elder abuse is a complex and dynamic problem.²²¹ The House should pass the 18-bill package. It expands seniors’ protection against elder abuse and makes up for Michigan’s current lack of elder abuse

213. S.B. 461, 96th Leg., Reg. Sess. (Mich. 2012).

214. *Id.*

215. *Id.*

216. Georgia J. Anetzberger, *The Evolution of a Multidisciplinary Response to Elder Abuse*, 13 MARQ. ELDER’S ADVISOR 107, 115 (2011).

217. S.B. 464, 96th Leg., Reg. Sess. (Mich. 2011).

218. *Id.* § 11b(9).

219. *Id.*

220. *Id.*

221. *See, e.g., Barber, supra* note 21.

legislation. In addition to passing the 18-bill legislation, other programs should be implemented on the state and federal level to comprehensively address the elder abuse problem.

A. Public Awareness and Educational Solutions

Public awareness and education are integral to treating elder abuse.²²² Michigan should conduct a public awareness campaign to promote social responsibility in addressing the elder abuse problem. This program should provide training, media campaigns, outreach, and educational programs. Education about prevention of elder abuse is less costly in the long run to the Michigan budget, as state funding spent on emergency and medical care is more costly than a preventative education program.²²³

Victim education and counseling needs to focus on empowering the victim to change the situation for herself.²²⁴ This includes providing the elderly with elder abuse victim information on how to obtain emergency and permanent orders of protection, which are generally successful at curtailing instances of domestic violence.²²⁵ Orders of protection would hopefully benefit the victim by giving them time away from the situation and time to reflect on why the victim chose to stay in the abusive relationship.²²⁶

B. Elder Abuse Shelters

Shelters should be created for elder abuse victims that are similar to domestic violence shelters. This provides a safe place and a support network to help victims empower themselves.²²⁷ Existing women's shelters can be used for elder abuse victims until shelters specific to elder abuse become available.²²⁸ It would be important for these shelters to have widened doors, be wheelchair accessible, include elevated toilet seats, and have access to walkers, as well as other gero-friendly accommodations.

222. *Id.* at 132-33.

223. *Id.*

224. *Id.* at 131.

225. *Id.*

226. *Id.* at 132.

227. Barber, *supra* note 21, at 132.

228. *Id.*

C. Preventative Programs

To prevent physical abuse, psychological abuse, and neglect, the state must develop a training curriculum for health care professionals to understand elder abuse.²²⁹ Further, the rights of elderly persons who have been appointed a guardian should be protected. An elderly person under the authority of a guardian loses the ability to make basic decisions.²³⁰ But, decisions that persons with diminishing capacity can still make should be preserved.²³¹

Further, to help prevent financial exploitation, the state should enlist the help of financial institutions.²³² Bill 463 requires financial entities to train their employees on how to identify elder abuse, which is a step in the right direction.²³³ Also, abusers should be prohibited from inheriting from those they abuse.²³⁴ Bill 461 prevents abusive heirs from inheriting.²³⁵ Because financial exploitation is the most common form of elder abuse and the 18-bill package accounts for it, the Michigan House of Representatives should pass the package as a whole.

D. The Federal Government's Role

The federal government should also implement laws. Congress should pass an act resembling the Child Abuse Prevention and Treatment Act²³⁶ for elders. This will lead to more consistent definitions and reporting procedures.²³⁷ Passing a federal law will also lead to more complete data collection, which would provide a better understanding of the elder abuse problem.²³⁸ Optimally, Congress would authorize a federal agency to oversee elder abuse and respond to changes.²³⁹ This may inspire states to collectively shift to combat elder abuse.²⁴⁰ Currently, states spend little money on adult protective services programs.²⁴¹ In 1989, ten states spent less than \$1 per elder resident for adult protective services, compared to \$45 per child resident for child

229. TASK FORCE, *supra* note 44, at 13.

230. *Id.*

231. *Id.* at 19.

232. *See id.* at 17.

233. S.B. 463, 96th Leg., Reg. Sess., § 11 (Mich. 2011).

234. TASK FORCE, *supra* note 44, at 17.

235. S.B. 461, 96th Leg., Reg. Sess. §2803(1) (Mich. 2012).

236. 42 U.S.C.A. §§ 5101-5119c (West 2013).

237. *See generally* Barber, *supra* note 21.

238. *Id.*

239. *Id.* at 133.

240. *Id.*

241. Sandusky, *supra* note 3, at 464.

protective services.²⁴² Additionally, the federal government could provide financial incentives for the states to implement elder abuse programs.

E. Making Courts Elder-Friendly

Another issue confronting elders is the difficulty of venturing to court.²⁴³ Often elder abuse victims cannot physically endure the journey to court or standing for long periods of time. States should make their courthouses user-friendly for the elderly.²⁴⁴ The 18-bill package furthers this agenda by including provisions for videotaped testimony.²⁴⁵ This type of accommodation can greatly impact an elder adult's ability to stand up for herself.

F. Funding

States need more funding to implement elder abuse programs.²⁴⁶ The Area Agency on Aging is currently seeking letters of intent to provide elder abuse prevention education under the Older Americans Act in Region 8.²⁴⁷ The funding for this program would provide \$14,027 for elder-abuse education in nine counties, which is a crucial step towards solving the elder abuse problem.²⁴⁸ However, the educational outreach would only span for one year: October 1, 2012 to September 30, 2013.²⁴⁹ Michigan needs more funding for a comprehensive educational scheme to have an impact on ageism and creating efficacious laws.²⁵⁰

242. *Id.*

243. See generally M. Abate et al., *Frailty in the Elderly: The Physical Dimension*, 43(3) EUR. J. PHYS. & REHAB. MED. 407 (2007).

244. *Id.*

245. Press Release, Mich. Dep't of Cmty. Health, Governor Proclaims June 15 Elder and Vulnerable Adult Abuse Day (June 15, 2012), available at <http://www.michigan.gov/som/0,4669,7-192-29942-280626--,00.html>.

246. Sandusky, *supra* note 3, at 464-66.

247. AREA AGENCY ON AGING OF W. MICH., SEEKING LETTERS OF INTENT (Apr. 10, 2012), http://www.aaawm.org/organizational_news/tag/elder%20abuse.

248. *Id.* See also Barber, *supra* note 21.

249. See, e.g., Barber, *supra* note 21.

250. *Id.*