Mandatory Reporting of Elder Abuse: A Cheap but Ineffective Solution to the Problem

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MANDATORY REPORTING OF ELDER ABUSE: A CHEAP BUT INEFFECTIVE SOLUTION TO THE PROBLEM

I. Introduction

During the past decade physicians, social workers, and the media have sought to inform the American public that many elder adults are being maltreated by in-home caretakers. As a result of articles and reports identifying potentially large numbers of cases, society

1. For a listing of the major research studies published on the subject of elder abuse, see infra note 16.

2. See infra note 16.


4. A caretaker is any individual who is responsible for the care of an elder. While a number of studies and articles refer to the familial relationship between the adult and the caretaker, this individual may or may not be a family member of the adult. See, e.g., ALA. CODE § 38-9-2(3) (Supp. 1985) (defining a caretaker as "an individual who has the responsibility for the care of the elderly . . . as a result of family relationship or who has assumed the responsibility for the care . . . voluntarily, by contract, or as a result of the ties of friendship"). This Note addresses the problem of abuse of older adults in the home, whether by their children or other family members. The distinct problem of parental abuse, caused by violent acts of their adolescent children, is beyond the scope of this Note. See Battered Parents in California: Ignored Victims of Domestic Violence, 19 SAN DIEGO L. REV. 781 (1982).

Adequately defining "elder abuse" is a concern of both researchers and legislators. See infra notes 64-71 and accompanying text. In most general terms elder abuse has been defined as the physical, sexual, psychological or financial abuse of the elderly or otherwise causing the deprivation of human rights by their relatives or caretakers. HOUSE SELECT COMM. ON AGING, 97TH CONG., 1ST SESS., ELDER ABUSE: AN EXAMINATION OF A HIDDEN PROBLEM I (Comm. Print 1981) [hereinafter cited as 1981 ELDER ABUSE REPORT].
is slowly accepting the fact that this form of family violence exists.\textsuperscript{5} This growing awareness has caused a legislative response which has focused on increasing the reporting of potential abuses.\textsuperscript{6} Since 1977, thirty-nine states have enacted legislation providing for the reporting of in-home adult or elder abuse.\textsuperscript{7} Seldom has a specific kind of legislation received such popular support and been enacted so quickly.\textsuperscript{8}

States that have adopted elder abuse legislation have almost uniformly chosen to address the problem by requiring specified profes-

\footnotesize{5. There is no agreement on the precise extent of the problem of elder abuse. It has been stated that the problem is as extensive as that of child abuse. N.Y. Times, Dec. 3, 1979, at D11, col. 2 (interview with Marilyn R. Block). A recent federal report placed the number at somewhere around one million older Americans per year. House Select Comm. on Aging, 99th Cong., 1st Sess., Elder Abuse: A National Disgrace 1 (Comm. Print. 1985) [hereinafter cited as 1985 Elder Abuse Report]. One study conducted in Illinois conservatively estimated that .04 percent of that state's elderly population might be the subject of a report in any one year. J. Crouse, D. Cobb, B. Harris, F. Kopecy, J. Poertner, Abuse and Neglect of the Elderly in Illinois: Incidence and Characteristics, Legislation and Policy Recommendations—Executive Summary 5 (1985) [hereinafter cited as Crouse]; see also Riffer, Elder Abuse Victims Estimated at 1 Million, 59 Hospitals 60 (1985).

6. "I am compelled to support and advocate for mandatory reporting of cases of elderly abuse. A strong message must be sent to to the public: Abuse of the elderly is not acceptable. It is not acceptable on the streets, it is not acceptable in institutions, and it is not acceptable in the home." Elder Abuse: Hearings Before Special Comm. on Aging of the U.S. Select Comm. on Aging, 96th Cong., 2d Sess. 40 (1980) (statement of Lou Glasse) [hereinafter cited as 1980 Hearings].

7. Prior to 1977 only three states had statutes which provided coverage in this area. See Appendix for a listing of all state statutes that provide for the reporting of adult or elder abuse, with a comparison of their provisions, in chart form. See infra notes 60-156 and accompanying text for a discussion of those provisions.

The problem of institutional abuse and neglect is outside the scope of this Note and has been addressed elsewhere. See Butler, Assuring the Quality of Care and Life in Nursing Homes: The Dilemma of Enforcement, 57 N.C.L. Rev. 1317 (1979); Nemore, Protecting Nursing Home Residents, 21 Trial 52 (Dec. 1985); Vossmeyer & Felix, The Missouri Omnibus Nursing Home Act of 1979: A Legislative History, 24 St. Louis U.L.J. 617 (1981); Weatherby, Regulation of Nursing Homes—Adequate Protection for the Nation's Elderly?, 8 St. Mary's L.J. 309 (1976); Comment, Nursing Home Patient Abuse Reporting: An Analysis of the Washington Statutory Response, 16 Gonz. L. Rev. 609 (1981).

"Elder" abuse statutes refer specifically to that abuse and/or neglect of adults over a statutorily specified age, ranging from between 56 to 70 years of age. See infra Appendix, col. 2. "Adult" abuse statutes refers to the abuse and/or neglect of anyone over the age of majority. Since many of these statutes specifically include elders within the class of individuals subject to a statute's provisions, and since elders are over the age of majority, these statutes will be examined as well as those that are age targeted. See infra notes 60-156 and accompanying text.

8. A similar response can be found in the legislative history of child abuse reporting laws. See Paulsen, Parker & Adelman, Child Abuse Reporting Laws—Some Legislative History, 34 Geo. Wash. L. Rev. 482 (1965).}
sionals to report known or suspected incidents of such abuse. The theory behind these “mandatory reporting” statutes is that the first step in curbing the problem of abuse is to identify its victims. Only a small minority of states provides that such reporting may be done on a voluntary basis. Yet research has shown that the mandatory reporting element of these statutes is not causing increased reporting of abuse, which indicates that the focus on mandatory reporting may be misplaced. In addition, the level of support services accompanying the statutes vary and are often minimal.

New York is one of eight states that does not have a statute requiring the reporting of in-home elder abuse, although legislation is currently pending. This Note presents a detailed examination of mandatory reporting statutes and contends that New York should not adopt such legislation. Mandatory reporting statutes are not the best way to reduce elder abuse because their level of effectiveness is not greater than their potential harm to those they seek to help. Instead, the New York State legislature should adopt certain amend-

9. For a discussion of the alternatives to mandatory reporting utilized by the other four states, see infra notes 11, 62. See infra notes 76-80 and accompanying text for a listing of those professionals most often required to report.

10. This theory was advanced by one of the earliest studies to be published on this subject.

In order to identify the number of elder abuse cases currently hidden from public view, passage of State mandatory reporting laws, . . . similar to those utilized in child abuse cases, is essential. The objective of a reporting law would be to identify abused elders so they would receive treatment for injuries and protection from further abuse.

M. Block & J. Sinnott, The Battered Elder Syndrome: An Exploratory Study 97 (1979) [hereinafter cited as Block & Sinnott].

11. Only Colorado, Iowa and Wisconsin currently have voluntary reporting laws. See infra Appendix, col. 3. Illinois is currently conducting a demonstration program to determine what type of legislation is appropriate for that state. See infra note 62.

12. See infra note 86 and accompanying text.


14. For a discussion of the legislation pending in New York, see infra notes 160, 191-212 and accompanying text.
ments to existing law that will better serve to combat the problem.\(^5\) By doing so, New York can avoid the dangers created by a mandatory reporting statute for elder abuse.

II. Background

Adult abuse, and more specifically elder abuse, caught the attention of state legislators in the early 1980's when family violence specialists published studies of the problem,\(^6\) and the United States Select

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15. See infra notes 212-36 and accompanying text.

16. Most of the research conducted in this area has been on a sociological level, attempting to identify the potential causes, characteristics of the abused and the abuser, and the types of abuse. See Block & Sinnott, supra note 10 (develops model describing types of maltreatment and situational and personal factors likely to be involved); Crouse, supra note 5 (a state-funded study designed to study incidence and characteristics of elderly in Illinois, study state legislation, and recommend policy options); Falcioni, Assessing the Abused Elderly, 8 J. Gerontological Nursing 208 (1982) (detailed analysis of characteristics of abused elders designed to assist nursing profession in assessment) [hereinafter cited as Falcioni]; Hickey & Douglas, Neglect and Abuse of Older Family Members: Professionals, Perspectives and Case Experiences, 21 Gerontologist 171 (1981) (study based on interviews conducted with 228 professionals in five different Michigan communities concerning their case experiences with abuse and neglect, setting forth causative factors for abuse) [hereinafter cited as Hickey & Douglas]; Lau & Kosberg, Abuse of the Elderly By Informal Care Providers, Aging, Sept.-Oct. 1979, at 11 (report of an exploratory study conducted at the Chronic Illness Center in Ohio using case records of 39 abuse cases, which represented 9.6% of all elderly clients seen by agency in a year; study identifies certain characteristics of abused and their reactions and posits some theories to explain cause of problem) [hereinafter cited as Lau & Kosberg]; Palincsar & Cobb, The Physician's Role in Detecting & Reporting Elder Abuse, 3 J. Leg. Med. 413 (1982) (discusses differences between child and elder abuse, physician's responsibility in detection and possible solutions to problem) [hereinafter cited as Palincsar & Cobb]; Rathbone-McCuan, Case Detection of Abused Elderly Patients, 139 Amer. J. Psych. 189 (1982) (providing list of case detection guidelines from physical indicators to behavioral patterns) [hereinafter cited as Case Detection]; Steinmetz, Elder Abuse, Aging, Jan.-Feb. 1981, at 6 (study based on 60 interviews of caregiving children, shedding some insight as to the dilemmas faced by caregivers) [hereinafter cited as Steinmetz].

All of the above studies have limitations. They are exploratory and descriptive and utilize non-representative samples. Each expressly qualified their findings and indicated the need for more comprehensive research and systematic data collection.

In addition to the lack of scientific data on the causes and prevalence of elder abuse, there is even less research available on the issue of the validity of mandatory reporting as a case finding tool. One of the most important studies available to date was conducted by the Alliance Division of Catholic Charities of Syracuse, New York. Alliance/Elder Abuse Project, An Analysis of States' Mandatory Reporting Laws on Elder Abuse (1983) [hereinafter cited as Alliance Report]. For a discussion of this study, see infra note 94. There is only one other study on this subject known to this author. See Salend, Kane, Satz & Pynoos, Elder Abuse Reporting: Limitations of Statutes, 24 Gerontologist 61 (1984) (comparing 16 elder abuse statutes and raising a number of questions about their effectiveness) [hereinafter cited as Salend].
Committee on Aging ("Committee") issued a landmark report. These early studies, although conducted in limited geographic areas using small numbers of subjects, have led to the erroneous conclusion that mandatory reporting statutes are the correct means of dealing with elder abuse.

The *Battered Elder Syndrome*, the first major study published in this area, recommended that mandatory reporting laws should be enacted in order to identify hidden elder abuse cases. The study suggested that these laws should be based on the statutes utilized in the child abuse area. This suggestion was subsequently endorsed by the Committee in its report.

As a result of its investigation, the Committee concluded that elder abuse was less likely to be reported than child abuse, that

17. 1981 Elder Abuse Report, supra note 4. This study was the first national investigation that had been undertaken in the area of elder abuse. Id. at iii. In order to reach its conclusions, the Committee collected, reviewed and tabulated letters and case histories it had received over a five year period; reviewed all studies, books, periodicals, and newspaper references on the subject; interviewed experts; reviewed court records; sent a questionnaire to all state human services offices; conducted follow-up interviews; and prepared and sent a questionnaire to all police chiefs. Id. at xiii.

18. The early studies conducted were based upon small non-representative samples which then extrapolated the data obtained to create a national incidence statistic. Pedrick-Cornell & Gelles, Elder Abuse: The Status of Current Knowledge, 31 Fam. Rel. 457 (1982). For a listing of studies and methodology, see supra note 16. See also Faulkner, Mandating the Reporting of Suspected Cases of Elder Abuse: An Inappropriate, Ineffective and Ageist Response to the Abuse of Older Adults, 16 Fam. L.Q. 69, 74 n.31 (1982) [hereinafter cited as Faulkner].

On the individual state level direct service providers such as social workers, nurses and home health aides perceived a need for a solution and at times lobbied for passage of these laws. Salend, supra note 16, at 63. However, in most instances no formal needs assessment took place. Id. at 63.


20. Id. at 97. This study suggested that the federal government should require the states to adopt such a statute. Id. at 88. For the federal government’s response in this area, see infra notes 22-38 and accompanying text.

21. Id. Other authors have drawn parallels between the abused child and the abused elder. See, e.g., Katz, Elder Abuse, 18 J. Fam. L. 695, 716 (1980) [hereinafter cited as Katz]. Such parallels have included the fact that both groups are dependent on their caretakers for most of their basic needs, that both make stressful and draining emotional, financial and physical demands on their caretakers and that both are perceived as politically weak and lacking in adequate legal protection. Steinmetz, The Politics of Aging: Battered Parents, Society, Jul.-Aug. 1978, at 54, 54-55 [hereinafter cited as The Politics of Aging].

22. 1981 Elder Abuse Report, supra note 17, at 127 ("the States may wish to consider enacting mandatory reporting legislation and otherwise upgrading their statutes to provide specific protections to the elderly equal to those provided to children").

23. For the sources utilized by the Committee, see supra note 17.

24. 1981 Elder Abuse Report, supra note 4, at 123. The Committee
found that one in three child abuse cases were reported as compared to one in six adult abuse cases. Id. There has been a great deal of speculation as to the reason for this low reporting rate. One reason suggested is that the elders almost never seek protection themselves. See infra note 47. Another rationale focuses on the low level of reporting by certain professionals. See Palincsar & Cobb, supra note 16 (discussion of reasons for under-reporting by physicians). Still another reason cited is that vigorous outreach and skilled investigations often are lacking. See Draft Memorandum of W. Gould to New York's Senate Standing Committee, Aug. 30, 1985, at 3. (A copy of this memorandum is on file at the Fordham Urban Law Journal office).

25. 1981 ELDER ABUSE REPORT, supra note 4, at 124. This figure was an estimate. The Committee based its conclusion on the data it had received from ten states. Id. It was from these figures that a national incidence of abuse was projected. Id.

26. "In reviewing the history of domestic violence in America, the Committee found that Federal legislation in the area of child abuse paid handsome dividends in encouraging States to enact needed legislative reform designed to prevent and identify the abuse of children in their jurisdictions." 1985 ELDER ABUSE REPORT, supra note 5, at 11.


28. For a discussion of the Act's eligibility criteria and the subsequent evolution of child protective laws, see Besharov, The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect, 23 Vill. L. Rev. 458 (1978) [hereinafter cited as Besharov].

29. See 1985 ELDER ABUSE REPORT, supra note 5, at 2.

30. H.R. 769, 97th Cong., 1st Sess. (1981), reprinted in HOUSE SELECT COMM. ON AGING, 97TH CONG., 1ST sess., ELDER ABUSE: AN EXAMINATION OF A HIDDEN PROBLEM (Comm. Print 1981). This bill was introduced by Chairman Claude Pepper and Congresswoman Mary Rose Oakar in 1981. In 1983, the bill was reintroduced as H.R. 3833, again referred to the Committees on Education & Labor and Energy & Commerce but did not pass the House. See 1985 ELDER ABUSE REPORT, supra note 5, at 43.
of the Secretary of Health and Human Services. This Center would provide a clearinghouse for research, programs, training materials and technical assistance. Most importantly from the states’ point of view, the Act provides that funding will be available to those states that have enacted legislation mandating the reporting of abuse.

Despite the fact that the Elder Abuse Act has not secured enough support to pass, it appears to have had the desired effect upon the states. Between 1980 and 1985, twenty-four states either enacted

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32. Id. § 2(b)(1).
33. Id. § 2(b)(2).
34. Id. § 2(b)(3).
35. Id. § 2(b)(4).
36. Id. § 4(b)(2)(B). The Act requires certain provisions to be part of a state’s statute. These include: immunity for reporters, id. § 4(b)(2)(A); prompt investigation and initiation of services, id. § 4(b)(2)(C); administrative procedures in effect, id. § 4(b)(2)(D); confidentiality provisions for the protection of elders’ rights, id. § 4(b)(2)(E); cooperation of other agencies, courts and law enforcement, id. § 4(b)(2)(F); provisions for the utilization of the least restrictive alternatives and participation by the elder, id. § 4(b)(2)(G); a funding provision, id. § 4(b)(2)(H); and a provision for the dissemination of information, id. § 4(b)(2)(I).
37. Despite its failure to succeed in each congressional session since 1981, Congressman Pepper believes the bill has its best chance of passing in the 1986 session. Abusing the Elderly, Newsweek, Sept. 23, 1985, at 76.

The federal government has been active in this area in a number of other ways. The 98th Congress enacted two bills that contain provisions for elder abuse prevention. The Family Violence Prevention and Services Act, Pub. L. No. 98-457, 1984 U.S. Code Cong. & Ad. News (98 Stat.) 1757 (to be codified at 42 U.S.C. §§ 10402-10412), enacted as part of the Child Abuse Amendments of 1984, Pub. L. No. 98-457, 1984 U.S. Code Cong. & Ad. News (98 Stat.) 1749, authorizes the making of grants to the states for family violence programs. 42 U.S.C. § 10402(a)(1) (Supp. 1985). Elderly victims specifically are included within the definition of family violence. Id. § 10408(1). The Act also requires that research be conducted to determine the necessity and impact of a mandatory reporting requirement and requires a complete study of the national incidence of abuse and exploitation of elderly persons. Id. § 10404. The Act also establishes a National Clearinghouse of Family Violence Prevention. Id. § 10407. The Clearinghouse would collect and disseminate information on family violence including elder abuse, as well as provide information about sources of services for victims. Id.

The Older Americans Act Amendments of 1984, Pub. L. No. 98-459, 1984 U.S. Code Cong. & Ad. News (98 Stat.) 1767 (to be codified at 42 U.S.C. §§ 3001-3058 (Supp. 1985)), adds a new state plan requirement with respect to elder abuse programs. In order to be eligible for federal grants the states must provide a program for: (a) public education to identify and prevent elder abuse; (b) receipt of reports of elder abuse; (c) active participation by older individuals; and (d) referral of complaints to law enforcement or public protective services agencies,
legislation or amended existing law to require mandatory reporting
of abuse. 38

Despite the conclusions of the Battered Elder Syndrome and the
Committee that child abuse reporting statutes should be used as a
model, it is not clear why these statutes have been used as the
legislative solution to the problem of elder abuse. 39 No preliminary
studies were conducted to determine if a mandatory reporting re-
quirement, an integral part of the child abuse statutes, would be
effective in reducing elder abuse. 40

Mandatory reporting laws for suspected incidents of child abuse
are based on three assumptions: "(1) children are incompetent,
helpless, and vulnerable; (2) children are at the mercy of their
caretakers; and (3) society has a protectible interest in children." 41
The premise of these statutes is that the state, acting in its role as

Act the state is required to secure the consent of individuals participating in the
program as well as the confidentiality of any information obtained. Id. § 3027(a)(16)(B)-
(C). The Act further requires that the Commissioner on Aging submit a report to
Congress on the extent of the need for elder abuse prevention services, with the
date of completion scheduled for not later than October 9, 1986. Id. § 3018(b).

There were no enactments during the first session of the 99th Congress that
directly addressed the elder abuse issue. However, there is currently a major
epidemiological study being conducted on elder abuse which is funded by the federal
government. The study, "Conflict & Abuse in the Family Care of the Elderly," which began in 1984, is a two year, $343,406 project being conducted by the
University of New Hampshire, Family Research Laboratory. 1985 ELDER ABUSE
REPORT, supra note 5, at 63. It is the first random sample survey ever conducted
in this area and will use street lists of the Boston area to conduct a telephone
survey with an optional in-person interview. Telephone interview with Dr. Karl
Pilemer, director of the study (Nov. 5, 1985) [hereinafter cited as Dr. Pilemer
interview].

38. See infra Appendix, col. 3.
39. Other possible models that could have been used by the states are: a domestic
violence model, used to combat the problem of spousal abuse, or an advocacy
model, which uses an advocate to inform the elder of available rights and alternatives
and assist in carrying out an agreed upon plan. CROUSE, supra note 5, at 7.
40. The Block & Sinnott study simply states that passage of such laws is
"essential" to identify elder abuse cases. BLOCK & SINNOTT, supra note 10, at 97.
Only one study suggested that such a model might be inappropriate for elder abuse,
citing cost factors, effects on aging services, and negative effects on the elder. See
CROUSE, supra note 5, at 7.
41. Palincsar & Cobb, supra note 16, at 433 (citing Fuller, Child Abuse, The
Physician's Responsibility, 3 J. LEGAL MED. 24, 26 (May 1975)).
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**parens patriae,** must protect those who cannot speak for or protect themselves. Instituting elder abuse reporting statutes based on such a premise implies that elders are incompetent and are unable to make a report on their own. Such an implication may serve to infantilize the elder's position in society, thereby furthering a form of bigotry towards elders known as ageism.

Moreover, mandatory reporting statutes may limit the elder's freedom to control his or her own life. The failure of an elder to report abuse does not necessarily mean an inability to do so. Rather, the

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42. **Parens patriae** refers to the traditional role of the state to act as sovereign and guardian of persons under legal disability. The doctrine originates from the English common law where the King had the power to act as guardian to persons with legal disabilities such as infants, idiots and lunatics. **BLACK'S LAW DICTIONARY** 1003 (5th ed. 1979).

43. Faulkner, **supra** note 18, at 76 ("[t]he basic assumption of mandatory reporting statutes is that children and other 'incompetents' cannot speak for or protect themselves").

44. Faulkner, **supra** note 18, at 76. However, as Professor Katz points out, the law distinguishes between the status of the child, which is incompetency, from that of the adult. Katz, **supra** note 21, at 717-18. [Once the age of majority is reached the decision-making power over one's life belongs to the individual; that power is not lost by virtue of old age alone. The aged do not, by definition, become incompetents who need protection from themselves and others. . . .] We must not lose sight of the fact that, although some of the aged may be dependent and at risk, they are not children who lack decision-making power by virtue of their age.

**Id.**

45. Faulkner, **supra** note 18, at 87 ("Policy planners and legislators should adopt, only with the greatest reluctance and demonstrated need, if at all, legislation which will further infantilize the older person"). Dr. Pilemer interview, **supra** note 37 ("such programs tend to infantilize the elderly and be a disruptive force in their lives"). See also Krauskopf & Burnett, *The Elderly Person—When Protection Becomes Abuse*, 19 *TRIAL* 61, 63 (Dec. 1983).

46. Ageism has been described as practices, including prejudices and stereotypes, which are negative in their appraisal of older persons and their role in society. Block & Sinnott, **supra** note 10, at 57 (citing Butler, *Ageism, Another Form of Bigotry*, 9 *GERONTOLOGIST* 243 (1969)). Interestingly, it has been hypothesized that this form of bigotry may also be an underlying factor of elder abuse itself. Block & Sinnott, **supra** note 10, at 57. It would indeed be ironic if these statutes were to further the very attitudes that their enactment was designed to quell.

47. The early studies indicated that abused elderly almost never seek protection themselves. Case Detection, **supra** note 16, at 189 ("[a]bused elderly persons rarely or with difficulty report acts of aggression against themselves by family members or others whom they are close to or dependent on for fulfillment of their basic needs"); Lau & Kosberg, **supra** note 16, at 11 ("[p]ride, embarrassment, fear, isolation, lack of access to services, and mental confusion are all obstacles to acknowledging financial abuse and seeking professional assistance"); The Politics of Aging, **supra** note 21, at 55 (suggesting that the reason that abused parents do not report abuse is because of "fear of retaliation, lack of alternative shelter, fear
elderly individual may have made a competent decision to remain in the abusive environment\textsuperscript{48} since limited alternatives to the existing situation may result in institutionalization,\textsuperscript{49} an option many elders perceive as a worse choice.\textsuperscript{50} However, in many of the statutes, an

of the unknown, and the shame and stigma of having to admit that they reared such a child"); see also Hooyman, Rathbone-McCuan, & Klingbeil, \textit{Serving the Vulnerable Elderly}, 15 \textit{URBAN \& SOC. CHANGE REV.} 9, 10 (No. 2 1982) (discussing both the sociological and structural barriers to adult self-help).

Professor Katz argues that the failure to seek protection by elders should not necessarily be interpreted to mean that others are to do it for them. Katz, \textit{supra} note 21, at 711.

\textsuperscript{48} Katz, \textit{supra} note 21, at 711 ("[r]eluctance to report may . . . be a function of [the] victim's determination that it is better to stay in a situation that is less than satisfactory than to suffer the consequences of professional intervention").

\textsuperscript{49} In one of the early studies it was found that 46\% of the subjects were eventually hospitalized in nursing homes as a result of intervention. Lau & Kosberg, \textit{supra} note 16, at 14. This study may be of somewhat limited value, however, since it was based on only 39 subjects, 18 of whom were institutionalized. \textit{Id.} In addition, all of the subjects were from the Chronic Illness Center in Ohio and all of the persons served by that center have a history of some type of physical or mental health problem, indicating that institutionalization may have been a necessary result even absent the existence of abuse. \textit{Id.}

The lack of alternatives to institutionalization is the result of economics. The states often do not have the funds to provide for alternatives such as group homes or home care. For a discussion of proposed New York legislation for the increase in funding in this area, see \textit{infra} note 11. In addition, alternatives that do exist may not be available for some elders. For example, domestic violence shelters are usually set up to handle only women and, in addition, often do not have appropriate facilities to provide shelter to those with disabilities. Interview with Risa Breckman, director of the Elder Abuse Project of New York City, Victim Services Agency (Oct. 17, 1985) [hereinafter cited as Interview with Risa Breckman]. The Elder Abuse Project was formed in 1983 to serve elder abuse victims in the Bronx. \textit{VICTIM SERVICES AGENCY, HISTORY OF THE ELDER ABUSE PROJECT, REPORT TO MAYOR KOCH} (1985) [hereinafter cited as \textit{VSA REPORT}] (on file at the Fordham Urban Law Journal office). Since that time, it has promoted the use of two senior citizen centers in that borough as "safe havens," provided counselling for victims and family members, trained volunteers and professionals and provided case consultation to other agencies. \textit{VSA REPORT, supra; see also Elder Abuse: Hearings Before the Subcomm. on Health \& Long Term Care of the Select Comm. on Aging, 99th Cong., 1st Sess. 50 (1985) (statement of Don Duhigg of Ohio) ("[t]he major problem that has hampered the effectiveness of the law [Ohio's Adult Protective Services statute] has been the absence of any funding provision") [hereinafter cited as \textit{1985 Hearings}]; id. at 83 (statement of Frances Hill, director of Blount County Dep't of Pensions and Security, Oneonta, Ala.) (noting a wide disparity in services because of lack of funding and citing examples of the differences in child and adult protective services, e.g., that in a rural city of 36,000, there are 9.5 social workers serving family and children, and only 1.5 for adults; additionally there are 30 child foster homes and only one such home for adults).}

\textsuperscript{50} It has been said that the fear by elders of institutionalization may be well founded as it may lead to premature death. See Lau & Kosberg, \textit{supra} note 16, at 14 ("institutionalization often produces a negative response . . . and may cause confusion and disorientation or earlier death").
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abused adult who refuses protective services may become the subject of an incompetency proceeding, where the decision concerning protective services will be made for him.51 Under some state statutes, an investigation may be conducted without the elder's consent,52 and protective services and/or incompetency proceedings may take place with only limited due process protections to the individual.53

Another criticism of the child abuse statutory model is that it presumes that effective treatment is available upon identification of abuse.54 History has shown that child abuse reporting laws are not effective unless supported by sufficient resources. However, these resources have been found at times to be inadequate,55 and this is likely to be an even greater problem in the case of elder abuse. Current demographic projections indicate that the segment of the elderly population that is most at risk is increasing at a rate faster than any other.56 If the need for services grows proportionately with

51. See Katz, supra note 21, at 719. A number of states provide that if an adult refuses services, they are not to be provided unless the adult lacks capacity. See infra Appendix, col. 12. The initial determination of a lack of capacity may lead to a proceeding where the court could order such services or appoint a guardian who would consent to services. See, e.g., ALA. CODE § 38-9-5 (Supp. 1985) ("[i]f the person is incapable of giving consent or does not consent, the department shall petition the court for an order authorizing the department to arrange for care for such person immediately") (emphasis added).

52. See infra note 121 and accompanying text.

53. Not all states provide for the right to counsel at an incompetency hearing or even the right to a hearing before a placement determination is made. See infra note 126 and accompanying text.

54. This argument focuses on the mandatory nature of the report, i.e., if persons are going to be required to report then the state must provide for any resultant services that may be necessary. See Faulkner, supra note 18, at 77. Some legislators have been made painfully aware of the problem with this presumption. See Elder Abuse: Joint Hearing Before the Special Comm. on Aging, 96th Cong., 2d Sess. 40 (1980) (statement of Geraldine Ferraro) ("[i]f we do have mandatory reporting, what we are saying is you must report the crime and are not following up with the services. I think the problem of adult abuse comes down to five little letters—namely one word—which is money. [I] feel a great sense of frustration when . . . dealing with this particular problem because if we have the people coming forward and we don’t have the money to deal with the problem, it is a real concern").

55. In the area of child abuse one author noted the lack of financing necessary to adequately support these programs, despite the fact that mandatory reporting has been in place for over a decade. See Besharov, supra note 28, at 518. Professor Schecter, in commenting on this problem, gives the example of one state, which, in the six years following the passage of its child abuse mandatory reporting law had not increased the size of its protective staff at all, despite a tremendous increase in reports during that time. Schecter, The Violent Family and the Ambivalent State: Developing a Coherent Policy for State Aid to Victims of Family Violence, 20 J. FAM. L. 1, 10 (1981).

56. It has been said that the group most vulnerable to the physical, mental, and financial crises requiring care by a family member are those 75 and older.
this population increase, the present fiscal climate indicates that funds will fall far short of the minimum necessary to support the presumption raised by the enactment of this legislation. Based on the lack of appropriations included with these statutes, the observation made by one author that child abuse reporting statutes were enacted more for the sake of appearances arguably applies to these elder abuse statutes as well.

In summary, mandatory reporting statutes can harm the elderly in three ways: by increasing age discrimination in society, by limiting the elder's freedom to control his or her own life and by providing an ineffective response to the problem that precludes the adoption of more effective measures. The next section, which provides an examination of existing state mandatory reporting laws, indicates

Steinmetz, supra note 16, at 6. Since these are the persons who have the greatest likelihood of being involved in a dependency relationship, they are more likely to face the possibility of abuse. Id.

Based on the most recent census data available, between 1970 and 1980, the percent increase in this segment of the population was 30.6% compared to 11.5% of the population as a whole. The projected changes between 1980 and 1990 are 38.0% and 10.0% respectively. Computed using statistics in American Demographic Magazine Editors, State Demographics: Population Profiles of the 50 States 2 (1984).

The increase in New York is even more dramatic. While between 1970 and 1980 there was a general population decrease of 3.7%, individuals aged 75 and older increased by 21.2%. It is estimated that by 1990 the general population will decrease by 6.3% while the at-risk group will increase by 14.7%. Id. at 224. New York's elderly population is expected to continue to grow until 2010. New York Elder Abuse Report, infra note 159, at 6. During this period, the age groups expected to show greatest growth are those 75 and older and 85 and older. Id.

The Committee used such projected population increases to reach its conclusion that elder abuse was increasing annually. See 1985 Elder Abuse Report, supra note 5, at 3.

About 4 percent of the Nation's elderly may be victims of abuse from moderate to severe. To put this another way, about 1 out of every 25 older Americans, or more than 1.1 million persons, may be victims of such abuse each year. This represents an increase of 100,000 abuse cases annually since 1981.

Id. (emphasis added).

57. The Committee found that while 40% of all reported cases involved adults (including elders), only 4.7% of the states' budgets for protective services are committed to elderly protective services. 1985 Elder Abuse Report, supra note 5, at 5. It was found that in 1984, on the average, $2.90 per elderly person was spent for protective services. Id.

58. "[S]ome of this legislation was passed for the sake of appearances: to appear to be coming to the aid of the victim, even if in substance little real aid is forthcoming." Schecter, supra note 55, at 8.

59. "[M]andatory reporting legislation is a popular target for enactment because it appears to solve the problem of elder abuse while costing very little." Faulkner, supra note 18, at 89.
that although certain of these statutes are better than others, all suffer from these significant problems.

III. State Elder/Adult Reporting Statutes: An Analysis

The state statutes which provide for the reporting of known or suspected cases of abuse or neglect fall into three categories: those that are age-based, requiring the reporting of suspected abuse of persons over a certain age; those that mandate reporting of abuse of all adults, with either the age of majority or no age specified at all; and those which provide for voluntary, rather than mandatory, reporting of suspected abuse. While all three types of statutes provide coverage for elders, those that are based strictly on the attainment of a particular age are the most controversial and are the focus of this analysis. The following will examine the main components of the statutes and analyze their strengths and weaknesses.

A. Definitional Problems

An initial problem faced by state legislators was creating a workable definition of the "abusive" behavior to be covered by the statute. The early studies on elder abuse lacked a common definition upon which the states could rely. This confusion is evident in the language

60. Some states have set this age at 60, while others use 65. See infra Appendix, cols. 2 & 3.
61. Id.
62. Id. at col. 3. Illinois is currently conducting a demonstration project to determine what legislation would be appropriate for that state. The three approaches being tested are: (1) an advocacy model which uses a voluntary reporting system; (2) a legal intervention model, using a voluntary reporting system in which the focus of combatting the problem is the Illinois Domestic Violence Act; and (3) a mandatory reporting model which requires certain classes of individuals to report. ILLINOIS ELDER ABUSE DEMONSTRATION PROJECT, INTERIM REPORT TO THE ILL. GEN. ASSEMBLY, APR. 1, 1985 at 2 [hereinafter cited as ILL. INTERIM REPORT]; see also 89 Ill. Admin. Code ch. II, § 250.300 (1984) (specifying that, while the same services will be available under each model, the level of "intrusiveness" into the elder's life will differ). A final report on this demonstration program is due December 31, 1986. ILL. ANN. STAT. ch. 23, §§ 6311, 6510 (Smith-Hurd Supp. 1985). However, the Illinois Department of Aging is seeking to extend the period for one year to permit expansion of the geographic regions covered. ILL. INTERIM REPORT, supra, at 8. This is believed necessary to adequately guide statewide programming. Id.
63. The discussion will include an examination of definitional problems, see infra notes 64-75; reporting procedures, see infra notes 76-106; investigative procedures (including confidentiality concerns), see infra notes 107-39; and privilege abrogation problems, see infra notes 140-56.
64. The Block & Sinnott study considered three categories of abuse: (1) physical (malnutrition, or injuries such as bruises, welts, sprains, dislocations, abrasions,
of the statutes. Key terms, such as "abuse" and "neglect," vary widely. The Committee defines elder abuse simply as "the physical, sexual, psychological or financial abuse of the elderly or otherwise causing the deprivation of human rights by their relatives or caretakers."
As one author has pointed out, the danger of definitions that are overly broad is that they may be found to be unconstitutional.\(^6\) To date, there are no cases determining the constitutionality of the elder abuse reporting statutes,\(^6\) but using the child abuse cases as a guide, they may possibly withstand constitutional scrutiny.\(^6\) Courts have determined that child abuse is a complex area where elaborate definitions are not necessary.\(^7\)

However, while these adult abuse statutes may not be adjudged unconstitutional, the concern remains that they may be so broad as to be ineffective. "[T]he sweep of some of the definitions is tantamount to legislating against unkindness to the elderly. It must be

legislation "abuse" is distinguished from "neglect." The former requires willful conduct on the part of the caretaker and the latter includes self-neglect of the adult. H.R. 3833, 98th Cong., 1st Sess. § 3(1), (5) (1983).

\(^6\) Faulkner, supra note 18, at 74 ("[t]he danger of too broad a definition [of elder abuse] is the inappropriate enlargement of the scope of the problem . . . . [A]s a result the relief fashioned is often broader than necessary and may constitute an unnecessary, unwise, and unethical, if not unconstitutional, invasion of the older adult's independence").

\(^7\) While there are no cases explicitly deciding the issue of the constitutionality of these statutes, arguments attacking their validity would most likely be based on the fifth and fourteenth amendments' requirement of due process of law alleging that the statute was unconstitutionally vague and indefinite. "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." Connally v. General Constr. Co., 269 U.S. 385, 391 (1926).

\(^6\) Although there have been a number of child abuse statutes that have been challenged on grounds of vagueness, they have been uniformly upheld. See, e.g., Bowers v. State, 283 Md. 115, 127, 389 A.2d 341, 348 (1978) (abuse defined as "cruel and inhumane treatment"); State v. Killory, 73 Wis. 2d 400, 424 N.W.2d 475 (1976) ("cruel maltreatment"); People v. Vandiver, 51 Ill. 2d 525, 530, 283 N.E.2d 681, 683 (1971) ("willfully to cause or permit . . . the health of such child to be injured"); State v. Fahy, 201 Kan. 366, 370, 440 P.2d 566, 569 (1968) ("any person who shall torture, cruelly beat, or abuse any child"); People v. Bergerson, 17 N.Y.2d 398, 402, 218 N.E.2d 288, 290, 271 N.Y.S.2d 236, 238 (1966) ("willfully and knowingly . . . cause or permits the . . . life of a child . . . to be endangered").

While these cases addressed the issue of constitutionality in the context of the penal child abuse statutes, it would seem likely that the adult abuse statutes, which are civil in nature, would be found to satisfy a lesser standard. See In re Lowery, 56 N.C. App. 320, 309 S.E.2d 469, 473 (N.C. Ct. App. 1983) (holding that whether "spankings or beatings" constituted abuse within the meaning of that state's adult protective services statute depends upon the circumstances); N.C. GEN. STAT. § 108A-101(a) (Supp. 1985) (defines abuse as "the willful infliction of physical pain, injury, or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health").

\(^7\) In drafting a statute intended to deal with a problem as complex as child abuse, the Legislature is not required to spell out the prohibited acts in elaborate detail." Bowers v. State, 283 Md. 115, 129, 389 A.2d 341, 349 (1978).
borne in mind that ‘unreasonable or unrealitic laws serve neither the profession or the public.’”

Another definitional problem can be found in the statutes’ coverage. As already mentioned, the mandatory statutes fall into two different classes: those that provide coverage for all adults eighteen years of age and older, and those that are written to include only those sixty years old or older. Even in the statutes that include all individuals eighteen and older, many of them specifically mention aging in the statute. To base these mandatory reporting statutes upon age has the effect of encouraging ageism in our society. Some of the statutes even equate age with physical disabilities, drug addiction, alcoholism, and mental illness, which tends to reinforce the societal notion that older persons are dependent persons.

B. Reporting: Who, How, To Whom

As with the child abuse models, the medical profession is the group most often required to report elder abuse. In the case of child abuse, these individuals are most likely to see injured children and presumably would be the most qualified to diagnose symptoms of abuse and neglect. However, some adult abuse statutes mandate

71. See Katz, supra note 21, at 714-15.
72. See supra notes 60-61 and accompanying text; see also infra Appendix, col. 3.
73. See, e.g., S.C. CODE ANN. § 43-29-10 (Law. Co-op. 1985) (titled “Protective Services for Developmentally Disabled and Senile Persons”); TEnn. CODE ANN. § 14-25-102 (1980 & Supp. 1985) (coverage of adults who because of “mental or physical dysfunctioning or advanced age” are unable to protect themselves) (emphasis added); UTAH CODE ANN. § 55-19-1 (Supp. 1985) (defining impairment as “mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, the infirmities of aging”) (emphasis added); Wyo. STAT. § 35-20-102 (Supp. 1985) (defines disabled adult as one unable to manage because of “infirmities of advanced age, physical disability, use of alcohol or controlled substances”) (emphasis added).
74. See Faulkner, supra note 18, at 81.
75. Id. at 85-86. See supra note 73 for the language of these statutes.
76. In every statute that specifically lists the professionals that are required to report, physicians are listed. They are followed by other professionals in the healing arts such as surgeons, dentists, osteopaths, chiropractors, podiatrists, chiropractors, psychologists, physical therapists, residents, interns, nurses, pharmacists and ambulance workers. See, e.g., ARK. STAT. ANN. § 59-1305 (Supp. 1985); ALASKA STAT. § 47.24.010 (1984); ARIZ. REV. STAT. ANN. § 46-454 (Supp. 1984); CONN. GEN. STAT. ANN. § 46a-15(a) (West 1983 & Supp. 1985); GA. CODE ANN. § 30-5-4 (1982 & Supp. 1985); CAL. WELF. & INST. CODE § 9381 (West 1985).
77. Besharov, supra note 28, at 466-67.
reporting by medical personnel who may not be qualified to diagnose a case of elder abuse or neglect.\textsuperscript{78}

In addition, other non-medical professionals who have regular contact with elders, and thus are in a position to identify abuse, have been required to report.\textsuperscript{79} This group also includes accountants or other professionals bearing a fiduciary obligation to the elder, since financial exploitation is often included as a form of abuse.\textsuperscript{80} Other states do not specify individuals, but simply mandate that any person having reasonable cause to suspect that the elder is in need shall report.\textsuperscript{81} Most states explicitly apply a “reasonable” standard to reporting requirements,\textsuperscript{82} and at times limit the obligation to situations where the professional is acting in his or her professional capacity.\textsuperscript{83} Voluntary reporting under a mandatory statute is often


provided for those persons who are not obligated to report under the statute.\textsuperscript{84}

By overgeneralizing the class of persons who are required to report, the impact and enforceability of the law is potentially diminished. "If the reporting group as delineated by statute is large, the impact of the reporting requirement may be diffused, and everybody's duty may easily become nobody's duty."\textsuperscript{85} Despite the focus on mandatory reporting by professionals, research shows that the great bulk of neglect and abuse reports continues to be made by private citizens—friends, neighbors, and relatives, not mandated professionals.\textsuperscript{86}

The usual method of reporting is by oral report made immediately to the designated agency.\textsuperscript{87} In some instances, this must be followed by a written report prepared within a few days of the original notification.\textsuperscript{88} Most of the states have failed to provide for the

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|}
\hline
Sources & Mentioned Once & Few Times (2-5) & Mentioned A Lot (6 or more) \\
\hline
law enforcement & X & & \\
visiting nurses/ & & X & \\
public health & & & \\
home health care & & & \\
agencies & X & & \\
physicians & & X & \\
hospital, emer. & & & \\
rooms or social & & X & \\
services & & & \\
social services & & & \\
agencies & & & \\
relative/family & & X & \\
friends/neighbors & & X & \\
individuals/gen. & & X & \\
victim & X & & \\
\hline
\end{tabular}
\caption{Reporting Sources: Number of Times Mentioned}
\end{table}


\textsuperscript{86} The Alliance Study found that in those states with mandatory reporting, the majority of the reports came from non-mandated sources. \textit{Alliance Report}, supra note 16, at 17.

\textsuperscript{87} The designated agency varies among the states although most statutes place responsibility with state and local departments of social services. See infra Appendix, col. 4 (agency listing) & col. 5 (time in which to report and the type of report required).

\textsuperscript{88} Id. at col. 5.
establishment of a central, statewide registry for the maintenance of this information.\textsuperscript{89}

A substantial number of the states provide reporters an explicit grant of immunity from liability.\textsuperscript{90} Some grant absolute immunity, while others qualify the protection by requiring that the report be made in good faith,\textsuperscript{91} with no malicious intent.\textsuperscript{92} This immunity was found to be necessary in the child abuse statutes in order to encourage individuals to make a report.\textsuperscript{93}

A number of the statutes make the failure to report punishable as a misdemeanor, with fines ranging from twenty-five dollars to one thousand dollars and maximum possible prison terms of up to

\textsuperscript{89} Only Arkansas, Connecticut, Florida, Iowa, Nebraska, Vermont and Washington currently provide in their statutes for adult abuse registries. See infra Appendix, col. 13.

Such registries have been found valuable in the area of child abuse reporting by providing advantages such as assistance in diagnosis, evaluation and encouragement of further reporting by providing feedback, monitoring performance of the protective services, coordination of treatment efforts, facilitation of research and development by creating statistical data and providing a focus for educational campaigns. See Besharov, supra note 28, at 501-08. For a discussion of the advantages such a registry would have for adult abuse reporting, see infra note 229 and accompanying text.

\textsuperscript{90} See infra Appendix, col. 7.

\textsuperscript{91} A number of the states also insert a provision in the immunity clause providing that good faith is presumed by those acting under the law. Id.; see, e.g., ARK. STAT. ANN. § 59-1311 (1985) ("for the purpose of any proceedings . . . good faith of any person required to report . . . [is] presumed"); Mass. Ann. Laws ch. 19A, § 15 (Michie/Law. Co-op. Supp. 1986) ("no person required to make a report shall be liable in any civil or criminal action"). Additionally, in those states that mandate reports by long-term care employees, provisions are included to safeguard facility retaliation. See, e.g., Fla. Stat. Ann. § 415.108 (West Supp. 1986) ("no resident or employee of a facility serving aged or disabled persons may be subjected to reprisal or discharge because of his actions in reporting abuse pursuant to [the statute]").


\textsuperscript{93} It has been said that child abuse reporters feared being sued unjustly for libel, slander, defamation, invasion of privacy and breach of confidentiality and thus it was the experience of the states that only such a grant would reassure
six months. None of the states currently provides a penalty for failure to report for those persons in the voluntary category.

While only three states explicitly legislate civil liability for a failure to report, in all likelihood a state with mandatory reporting already provides for such liability, since under common law, violation of hesitant reporters. See Besharov, supra note 28, at 475. Professor Besharov also points out, however, that current legal doctrine makes anyone who is legally mandated to make such a report pursuant to statute, free from liability as long as the report was made in good faith. Id. Nevertheless, these provisions have been carried over into adult reporting statutes. See infra Appendix, col. 7.

Rhode Island has found this immunity provision to be a necessary part of its elder abuse statute in order to alleviate the reluctance of social workers to report cases. Working with Abused Elders: Assessment, Advocacy and Intervention 59 (1984). This manual was one of the products of a program, funded by the federal government, which created three model projects to demonstrate improved mechanisms for reporting, investigation, treatment and prevention of elder abuse and neglect. Wolf, Godkin & Pilemer, Elder Abuse & Neglect: Final Report From Three Model Projects, Executive Summary s1 (1984) [hereinafter cited as Three Model Projects Report]. The Rhode Island Department of Elderly Affairs was one of the three projects selected to carry out the program and was the only one with a mandatory reporting law. Id.; see also 1985 Hearings, supra note 49, at 4-5 (statement of Rep. Mary Rose Oakar) ("[o]ne reason why so many are reluctant to report this problem to the proper authorities is that . . . very often States and certainly the national law does not provide immunity from any personal prosecution").

94. See infra Appendix, col. 6. Despite provisions in the statutes for such penalties, a study conducted on these statutes reports only one instance where such a provision was utilized and in that case none of the charges were prosecuted. Alliance Report, supra note 16, at 9. This study also raises the question of whether such a provision necessarily creates a more effective mandatory reporting statute. Four out of five states without such penalty provisions responded that they did not believe such a provision would make their law more effective. Id. at 8. Only one state responded that such a provision was essential. Id. at 9.

The Metropolitan Commission on Aging of Onondaga County, New York, which contracted with the Alliance Division of Catholic Charities of Syracuse, was the recipient of one of the grants from the Administration on Aging for the development of a model project. See Three Model Projects Report, supra note 93, at s1. One of the results of the Alliance/Elder Abuse Project was the publication of an analysis of existing elder abuse mandatory reporting laws. The study was conducted by sending a detailed questionnaire to all those states with a mandatory reporting statute and its purpose was to determine which components of the laws were favored by the states, which appeared to increase or decrease the effectiveness of the law, and whether the states with such laws perceived them effective in resolving the problem of elder abuse. Alliance Report, supra note 16, at 2. At the time of the original survey, 17 states had a mandatory reporting statute. A follow-up survey was conducted of 14 additional states that subsequently passed some form of mandatory reporting statutes. Id. at 23. To date, the Alliance Report is the only study that has comprehensively looked at mandatory reporting statutes and their effectiveness in handling the problem of elder abuse.

a statutory duty is negligence per se. As yet there are no cases interpreting these statutes that address this issue. However, a California case, *Landeros v. Flood,* addressed this question in the context of a doctor’s failure to properly diagnose and report a case of Battered Child Syndrome. The California Supreme Court held that the plaintiff had stated a cause of action on theories of both common law and statutory negligence. Whether a court, confronted with a professional who failed to diagnose and report an incident of elder abuse, would so hold depends upon one crucial point: is the Battered Elder Syndrome a legally qualified diagnosis? Whether

96. See W. Keeton, Prosser & Keeton on Torts 229-30 (5th ed. 1984) [hereinafter cited as Prosser].

97. 17 Cal. 3d 399, 551 P.2d 389, 131 Cal. Rptr. 69 (1976).

98. Id. at 405, 551 P.2d at 391, 131 Cal. Rptr. at 71. The first reference to this syndrome was published in Kempe, *The Battered Child Syndrome*, 1962 Am. Med. A. 181 (1962) [hereinafter cited as Kempe]. Katz, supra note 21, at 696. There it was defined as a "clinical condition in young children who have received serious physical abuse, [and] ... a frequent cause of permanent injury or death."

In *Landeros*, the child was first brought to the hospital suffering from a broken leg, which appeared to have been caused by a twisting force, for which her mother had no explanation. *Landeros*, 17 Cal. 3d at 405, 551 P.2d at 391, 131 Cal. Rptr. at 71. In addition, she had multiple bruises and abrasions and demonstrated fear when approached. Id. at 405-06, 551 P.2d at 391, 131 Cal. Rptr. at 71. All these elements were cited by the court as indications of the Syndrome. Id. at 406, 551 P.2d 391, 131 Cal. Rptr. at 71. The child was returned home, without the defendants filing a report, and was brought to a different hospital two months later suffering from severe injuries. Id. at 405-06, 551 P.2d at 391, 131 Cal. Rptr. at 71.

99. The court expressly held that while there was only one cause of action—that to be free from bodily harm—the statutory violations provided an alternative legal theory to support plaintiff's cause of action for personal injuries. Id. at 413, 551 P.2d at 396, 131 Cal. Rptr. at 76.


The Block & Sinnott Study was the first publication to characterize elder abuse as a syndrome. Katz, supra note 21, at 696 n.2. However, the symptoms of this syndrome are not necessarily as easily identified as those of child abuse. See Palinscar & Cobb, supra note 16, at 426-28. A number of classic symptoms of child abuse might not transfer to elder abuse. Id. For example, certain ocular damage in young children can be a result of abuse. Id. at 426. Yet the same injury in an elder person may have been caused, not by a blow to the head, but high blood pressure or diabetes. Id. at 426. In addition to physical distinctions, the reporter may not be able to use mental health to discern abuse. Certain characteristic behavioral patterns have emerged with battered children, yet an elder may suffer from chronic dementia or long term depression which may inhibit proper detection. Id. at 428.

a physician should have identified the problem and reported it will depend upon the admissibility of expert testimony identifying the elements of the syndrome. The presumption of statutory liability is that the failure to report, as required by law, indicates a lack of due care. Since the standard of these statutes is one of reasonableness, it must therefore be determined whether it is reasonable for a physician to suspect abuse. This also can only be demonstrated by expert evidence showing that such detection is an accepted medical diagnosis. In the child abuse area, such evidence was permitted after extensive scientific research. Such research on elder abuse is lacking, making it unlikely that courts will accept evidence of an Elder Abuse Syndrome without further study.

C. Investigative Procedures

In addition to specifying whether reports need to be oral or written and when they must be made, many of the statutes also outline the contents necessary in a report, specifying that the report include such information as the name and address of the adult, the name and address of the alleged abuser, the nature and extent of the injuries, the basis of the reporter's knowledge and any other facts or circumstances which may be relevant.

The consequences of a report depends, in part, on the express

101. "The standard of care against which the acts of a physician are to be measured is a matter peculiarly within the knowledge of experts... and can only be proved by their testimony, unless the conduct required by the particular circumstances is within the common knowledge of the layman." Landeros, 17 Cal. 3d at 410, 551 P.2d at 394, 131 Cal. Rptr. at 74.

102. See, e.g., CAL. EVID. CODE § 669 (West Supp. 1986) ("[t]he failure of a person to exercise due care is presumed if... he has violated [a] statute"); see also Martin v. Herzog, 228 N.Y. 164, 169, 126 N.E.2d 814, 815 (1952) (Cardozo, J.) ("[t]he omission of a safeguard, prescribed by statute is... negligence in itself"); PROSSER, supra note 97, at 220 ("[w]hen a statute provides that under certain circumstances a particular act shall or shall not be done, it may be interpreted as fixing a standard... from which it is negligence to deviate").

103. See supra notes 81-83 and accompanying text.

104. See supra note 101.

105. Landeros, 17 Cal. 3d at 409, 551 P.2d at 393, 131 Cal. Rptr. at 73. "[B]ased upon an extensive study of the subject by medical science... the diagnosis of the 'battered child syndrome' has become an accepted medical diagnosis." Id. at 409, 551 P.2d at 393, 131 Cal. Rptr. at 73 (quoting People v. Jackson, 18 Cal. App. 3d 504, 506, 95 Cal. Rptr. 919, 921 (1971)).

106. See supra notes 16-17 and accompanying text.

107. See supra notes 87-88 and accompanying text.

purpose of the legislation.\textsuperscript{109} For example, some statutes specifically provide for the detection and correction of abuse, including the establishment of protective services.\textsuperscript{110} Conversely, some specify that the statute is simply for the purpose of identifying and documenting the problem, or encouraging interagency cooperation, with no attendant provisions for services.\textsuperscript{111} However, all of the statutes provide for an initial investigation of a report.\textsuperscript{112} Such investigations usually take

\begin{quote}
\textsuperscript{109} A number of the states place general purpose or legislative intent clauses in their statutes. See infra notes 110-11. While such clauses have little or no binding impact, they are of assistance in directing administrative procedures and judicial interpretations and determining the nature and extent of a state's response. See Sussman, Reporting Child Abuse: A Review of the Literature, 8 FAM. L.Q. 245, 247 (1974).

\textsuperscript{110} See, e.g., FLA. STAT. ANN. § 415.101 (West Supp. 1985) ("[i]t is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation and to establish a program of protective and supportive services for all persons in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect and exploitation"); 1982 Idaho Sess. Laws ch. 286 § I ("declared by legislature . . . that its elderly citizens be protected from abuse, exploitation, neglect and abandonment through the reporting and investigation of such acts").

\textsuperscript{111} The historical note to California's Elder Abuse Reporting Act demonstrates the initial intent of that state in this area. See 1983 Cal. Legis. Serv. 7421 (West).

It is the intent of the Legislature in enacting the provisions of the act to establish a mechanism to document the extent and type of elder abuse through reporting and evaluating instances of suspected elder abuse, in order to ascertain the need for planning and development of programs for provision of services to victims of elder abuse. County adult protection services agencies shall not be responsible for any increase in adult protective services resulting from the provisions of this act, except to the extent that existing state and federal funds are available for these services.

\textit{Id.}

A recent amendment to this section, however, demonstrates that state policy has since changed. CAL. WELF. & INST. CODE § 9380 (West Supp. 1985).

"[i]t is the intent of the Legislature in enacting this chapter to provide, in those instances where a county has designated an elder abuse reporting agency, that that agency shall receive [reports] and shall take any actions as are considered necessary to protect the elder and correct the situation and ensure the individual's safety.

\textit{Id.; see also} NEV. REV. STAT. § 200.5091 (1983) ("policy of this state to provide for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate state agencies providing human services in identifying the abuse, neglect and exploitation of older persons through the complete reporting of abuse, neglect and exploitation of older persons"); OR. REV. STAT. § 410.620 (1981) ("[t]he Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons").

\textsuperscript{112} The time specified for commencement of the investigation varies among the states, some requiring immediate or prompt action, others permitting as much as three days for the receipt of a report. See infra Appendix, col. 5.
the form of a home visit and/or consultations with persons knowledgeable about the case.113

The statutes vary in the rights they grant to the adult to refuse to submit to an investigation. Some permit refusal with the proviso that upon reasonable cause a petition may be sought for a guardian or court order.114 Others specify that a court order can be obtained to gain entry,115 or a search warrant may be used upon a showing of probable cause.116 Still others are completely silent on the issue.117

Upon completion of an investigation, a recommendation of protective services may be made and/or the case may be referred to the appropriate law enforcement agency, if necessary.118 Most of the statutes do not include penalties for the abuser, on the belief that inclusion of a quasi-criminal provision in these statutes would be at direct odds with their service-oriented intent.120

If a determination is made that protective services are necessary, some states require the adult’s consent before implementation.121

113. Id.; see, e.g., Okla. Stat. Ann. tit. 43A, § 805 (Supp. 1984) (providing that investigation shall include a diagnostic evaluation); Wis. Stat. Ann. § 46.90(5)(b) (West Supp. 1985) (scope of investigation is at agency discretion and may include home visits, observations and personal interviews).


116. See, e.g., Mich. Comp. Laws Ann. § 400.11b(4) (Supp. 1985); Tenn. Code Ann. § 14-25-103(f) (1980 & Supp. 1985). The results of the Alliance Report indicated that these provisions are rarely utilized. Of those states with a provision for court ordered entry upon a showing of probable cause, two reported that this was never necessary, one responded it was “almost never” used, one used it in less than 10% of its cases, one less than 10 times in over 1500 cases, and one used it in 1 in 1000 cases. Alliance Report, supra note 16, at 6-7. It must be remembered, however, that the Alliance Report was limited in scope. Its initial survey was conducted of only mandatory reporting statutes. Id. at 2. An addendum to the survey comments, however, that a follow-up survey of an additional 14 states appeared to confirm its original findings. Id. at 23.


119. See infra Appendix, col. 6.


121. See, e.g., Del. Code Ann. tit. 31, §§ 3905, 3906 (1985) (if the person withdraws or refuses consent, the service shall not be provided unless by court order. If a person lacks the capacity to consent, individuals authorized to provide
These protective services can take many forms, ranging from home care services to institutionalization. In response to the objections that have been raised concerning forced institutionalization, some states have explicitly legislated that the services instituted should be the least restrictive of the individual's personal freedom or that institutionalization should be utilized only when no other alternative is available.

In some situations, involuntary services may be provided either in an emergency or if the individual lacks the capacity to consent. The determination of lack of capacity most often must be made by a court, but some states provide that the investigating agency official, police officer, or social worker can make this decision. Due process safeguards, such as notice, right to a hearing, representation and presentation of evidence are included in varying degrees.

services are: (1) police officer, on probable cause of death or immediate and irreparable injury; (2) Attorney General; (3) emergency court order; (4) appointment of a guardian; and (5) social worker on probable cause of death and irreparable physical injury); ME. REV. STAT. ANN. tit. 22, §§ 3481, 3482 (Supp. 1982) (no services without consent; if department reasonably determines a lack of capacity it may petition the court for guardianship or conservatorship); N.C. GEN. STAT. §§ 108A-104, 108A-105(a) (Supp. 1985) (services arranged if disabled adult consents or if director reasonably determines that a disabled adult lacks capacity he may petition for a court order). See also infra Appendix cols. 11 & 12 for a complete listing of the states' response in this area.

122. See, e.g., DEL. CODE ANN. tit. 31, § 3904 (1985) (services to include medical and psychiatric evaluations, social casework, home health care, homemaker services, daycare, chore services and out of home services such as respite care, emergency housing, placement in rest homes, referral for legal services and transportation); see also IDAHO CODE § [39-5302(6)] 39-5202(6) (1985).

123. See, e.g., ARK. STAT. ANN. § 59-1308 (Supp. 1985) (finding of the least drastic alternative, including the finding for non-institutional care whenever possible); ALA. CODE § 38.9.6 (Supp. 1985) ("[c]ourt to give preference to the least drastic alternative"); IDAHO CODE § [39-5303] 39-5203 (1985) ("[s]hall provide services that are least restrictive of personal freedom and encourage client self-determination and continuation of care"); MASS. ANN. LAWS ch. 19A, § 20 (Michie/Law. Co-op. Supp. 1985) ("[c]ourt shall not order an institutional placement or a change of residence unless it finds that no less restrictive alternative will meet the needs of the elderly"); KY. REV. STAT. § 209.090 (1982) (statute's intent is to provide "least possible restrictions on the exercise of personal and civil rights, consistent with the person's needs, . . . [while requiring] that due process be followed").

124. See infra Appendix, col. 12.

125. See, e.g., ARK. STAT. ANN. § 59-1308 (Supp. 1985) (department, police officer, law enforcement official, or social service employee may take an endangered adult into protective custody); MO. STAT. ANN. § 660.290 (Vernon Supp. 1985) (peace officer on probable cause).

126. See infra Appendix, col. 12. Because of the difficulties attendant with getting an elder with physical disabilities to court, one state has provided that prior to the institution of involuntary services, if the adult is unable to be present at the
The state statutes also vary in the level of confidentiality they afford to the investigative information obtained and the records generated as a result. A certain level of confidentiality is essential to protect the rights and sensibilities of the family members involved in such proceedings, since these records often contain information about very private aspects of family life. Nevertheless, the information in these records must be available to those who will need to make decisions based on the information in those reports.

In general, the statutes take three approaches regarding access to records. Some permit access to certain individuals, as enumerated in the statute, others make the records confidential but authorize the responsible agency to issue regulations allowing some persons access, and still others mandate blanket confidentiality. Some of these statutes include a provision that the report may be released only if the subject consents.

Persons listed in either a central registry or other agency files should have the statutory right to review the contents of the record and make appropriate application to amend or remove such information. Only four states currently have such a provision in their statutes. In addition, if reports are proven to be unfounded, the hearing, a court investigator must personally interview the adult. Utah Code Ann. § 55-19-4(7)(c) (Supp. 1985).

127. See infra Appendix col. 9. In order to qualify for assistance under the proposed federal Elder Abuse Act, a state must provide for "methods to preserve the confidentiality of records in order to protect the rights of the elder." H.R. 3833, 98th Cong., 1st Sess. § 4(b)(2)(D) (1983).

128. See, e.g., Ark. Stat. Ann. § 59-1314(4) (Supp. 1985) (information available to: physicians with patient who they suspect may be a victim; persons authorized by the agency; any person who is the subject of a report; any court; and bona fide research groups); see also Fla. Stat. Ann. § 415.107(2) (West Supp. 1986) (only law enforcement agents, state attorneys, grand jury or agency officials involved in an investigation permitted access to a report).


131. See, e.g., Alaska Code § 47.24.050 (Supp. 1985); Conn. Gen. Stat. Ann. § 46a-18 (West 1983 & Supp. 1985) ("[a]ny person . . . authorized to carry out the duties enumerated in this chapter shall have access to all relevant records, except that records which are confidential to an elderly person shall only be divulged with the written consent of the elderly person or his representative"); Idaho Code § 39-5305 (1985).

record should be sealed and all identifying information removed. As a matter of fundamental fairness, alleged abusers ought to know what information a government agency is keeping about them. Such access should be permitted if one is to pursue his legal rights to have the record amended, expunged, or removed.

The individual’s right to privacy as protected by these confidentiality provisions must be balanced against the need to provide access to those who are making crucial adult protective decisions. Carefully designated professionals should be given access to records if they have the responsibility for making decisions about a course of emergency or involuntary services—when they may be making a life or death decision. Other professionals may not need direct access but rather can make requests of the agency for particular information contained in the file.

An extremely important function of collecting this data is to understand the problem and to plan, monitor and evaluate services; thus it is essential that this information be available to academics, policy-makers, legislators and researchers. Confidentiality can be preserved by expunging all personal identifying information before permitting access. Alternatively, the statute can provide that a court order may be obtained to gain access to any necessary personal information. Legitimate concerns for privacy can be met with

133. See, e.g., Fla. Stat. Ann. § 415.103(3)(c) (West Supp. 1986) (“[u]pon completion of its investigation, the [agency] shall classify reports either as ‘indicated’ or ‘unfounded.’ All indentifying information in the abuse registry maintained in an unfounded report shall be expunged immediately”).


provisions to ensure that disclosure is limited to situations where the need for personal identifiers is essential and where strict scrutiny of requests is observed.

D. Abrogation of Privileges

As previously discussed, those mandated to report include professionals who are most likely to come in contact with an abused or neglected adult.\textsuperscript{140} Many of these professionals are also subject to a statutory privilege, making their communication with their clients or patients confidential.\textsuperscript{141} Usually, persons subject to such privileges are prohibited from disclosing anything that is within the scope of the privilege unless the protected person consents.\textsuperscript{142} Many of the adult abuse reporting statutes, relying on child abuse counterparts, contain provisions abrogating these privileges.\textsuperscript{143} Impetus for these exceptions in the child abuse statutes was to allay the concerns potential child abuse reporters might have about reporting information that they had gained as a result of a confidential relationship.\textsuperscript{144}

Creating such an exception to the doctor-patient privilege in adult abuse statutes may discourage the person from seeking medical assistance.\textsuperscript{145} The state's interest in detecting and preventing elder abuse by the disclosure of such confidential communications may

\textsuperscript{140} See supra notes 76-80 and accompanying text.
\textsuperscript{141} Depending on the particular state, statutes establish privileges in relation to the communications between physician and patient, priest and penitent, psychologist and client, and social worker and client. See, e.g., N.Y. CIV. PRAC. LAW § 4504 (McKinney Supp. 1986) ("[u]nless a patient waives the privilege, a person authorized to practice medicine . . . shall not be allowed to disclose any information which he acquired in attending the patient in a professional capacity, and which was necessary to enable him to act in that capacity"); see also id. § 4505 (clergy); id. § 4507 (psychologist); id. § 4508 (social worker).
\textsuperscript{142} See, e.g., ILL. ANN. STAT. ch. 110, § 8-802 (Smith-Hurd 1984) ("[n]o physician or surgeon shall be permitted disclose any information he or she may have acquired . . . except only with the expressed consent of the patient").
\textsuperscript{143} See infra Appendix, col. 8.
\textsuperscript{144} See Besharov, supra note 28, at 477.
\textsuperscript{145} See Faulkner, supra note 18, at 83 ("[t]he proposed exception would likely create a severe strain upon the doctor/patient relationship and might, in fact, discourage the older person from seeking medical assistance"). This strain may not be limited to the doctor/patient relationship. It has recently been reported that clergy are concerned about this issue in connection with receiving confessions of child abuse. See 72 A.B.A. J., Feb. 1986, at 36 (reporting on the problem and discussing Florida case where clergyman was held in contempt for refusing to testify against parishioner accused of child abuse). Many elderly who use their clergy as a confidante may now find these confidential conversations in jeopardy.
be thwarted by mandating such reports, because the elder will simply
avoid seeking assistance.\textsuperscript{146}

Abrogating such privileges may also deter the abuser from seeking
assistance if he knows that his treatment professional is required to
warn of potential neglect or abuse of an elder.\textsuperscript{147} Moreover, profes-
sionals may choose not to report in order to prevent the disruption of
therapeutic treatment.\textsuperscript{148}

A recent California case involving a child abuse statute indicates
that abrogations of these privileges are to be construed narrowly.\textsuperscript{149}
In \textit{People v. Stritzinger,} the court was faced with a conflict between
California’s Child Abuse Reporting Act\textsuperscript{150} and the psychotherapist-
patient privilege.\textsuperscript{151} After acknowledging that the privilege was not

\begin{enumerate}
\item[146.] Faulkner, \textit{supra} note 18, at 84.
\item[147.] This is similar to the arguments that were raised after the decision in
Tarasoff v. Regents of Univ. of Cal., 17 Cal. 2d 425, 551 P2d 334, 131 Cal. Rptr.
14 (1976). In \textit{Tarasoff,} the California Supreme Court held that when a psycho-
therapist determines or should have determined that his client presents a serious
danger of violence to another, he incurs an obligation to use reasonable care to
protect the intended victim. \textit{Id.} Such care may require a warning either to the
victim or the proper authorities. \textit{Id.} at 431, 551 P.2d at 340, 131 Cal. Rptr.
at 20.

Interestingly, a California survey found the reverse to be true—finding that
patients, told in advance that psychologists may have to warn if the patient poses
a potential threat to a third person, actually showed an increase in trust toward
the psychologist. New York Elder Abuse Coalition Meeting (Oct. 28, 1985) (statement
of Prof. John J. Regan, Hofstra University School of Law).
\item[148.] In research conducted on the child abuse legislation, it was found that many
professionals do not report suspected child abuse or neglect for this reason. \textit{See
Besharov, \textit{supra} note 28, at 478-79. Many local and some state protective offices
actually encourage professionals to disregard the reporting requirement for such
cases. \textit{Id.}
\item[149.] \textit{People v. Stritzinger,} 34 Cal. 3d 505, 668 P.2d 738, 194 Cal. Rptr. 431
(1983). To date there are no cases interpreting this provision of the adult abuse
statutes.
\item[151.] This privilege is codified at \textit{CAL. EVID. CODE} § 1014 (West 1966 \& Supp.
1986). The facts of \textit{Stritzinger} are briefly as follows. The defendant was accused
of engaging in various sex acts with his minor stepdaughter, Sarah, during a 15
month period. \textit{Stritzinger,} 34 Cal. 3d at 509, 668 P.2d at 741, 194 Cal. Rptr.
at 434. After learning of the incidents from Sarah, the defendant's wife, Sarah's
mother, arranged for both of them to see a psychologist. \textit{Id.} After meeting with
Sarah, the psychologist reported what she had told him, as required by the statute,
to a child welfare agency, who subsequently notified the sheriff's office. \textit{Id.} After
meeting with the defendant, the psychologist was contacted by the sheriff's office
at which time he disclosed the defendant's confidential statements. \textit{Id.} The psy-
chologist subsequently testified at trial as to these communications and the defendant
sought to have them excluded on the basis of the psychotherapist/patient privilege.
\textit{Id.}
\end{enumerate}
absolute,\textsuperscript{152} and that psychotherapists had an affirmative duty to report any known or suspected instances of child abuse,\textsuperscript{153} the court construed the statute to mean that only required reports of abuse were to take precedence over the privilege.\textsuperscript{154} The court thus excluded reports that were authorized but not required.\textsuperscript{155}

While neither child nor adult abuse statutes address the issue, the court also appeared to indicate that a professional should inform the adult of the intention to violate the confidential relationship.\textsuperscript{156}

In summary, most states have responded to the problem of elder abuse by mandating the reporting of known or suspected abuse. The absence of appropriations accompanying these statutes indicates that they may be more a demonstration of government ambivalence to the problem than a firm commitment to solve it.\textsuperscript{157} Creating new legislation without funds to ensure its effective operation is not a solution to any problem. Simply passing a mandatory reporting law will not solve elder abuse.\textsuperscript{158}

The New York legislature is considering whether to enact legislation for the mandatory reporting of elder abuse.\textsuperscript{159} New York should

\textsuperscript{152} Stritzinger, 34 Cal. 3d at 511, 668 P.2d at 742, 194 Cal. Rptr. at 435.
\textsuperscript{153} Id. at 512, 668 P.2d at 743, 194 Cal. Rptr. at 436.
\textsuperscript{154} While the statute requires specified professionals including psychotherapists to report, Cal. Penal Code \$ 11,166(a) (West 1982), optional reporting is also provided for under Cal. Penal Code \$ 11,166(d) (West Supp. 1986). The court reasoned that the psychotherapist had satisfied his statutory reporting obligation by his initial report and that he was not required to make subsequent reports of the same abuse. 34 Cal. 3d at 514, 668 P.2d at 744, 194 Cal. Rptr. at 437. Since the psychotherapist was under no obligation to make his second report, the court found it was not exempt from the privilege. \textit{Id.} at 514, 668 P.2d at 744, 195 Cal. Rptr. at 437.
\textsuperscript{155} Stritzinger, 34 Cal. 3d at 513-14, 668 P.2d at 744, 194 Cal. Rptr. at 437.
\textsuperscript{156} "If the psychiatrist is compelled to go beyond an initial report to authorities . . . and must . . . repeat details given to him by the adult patient in subsequent sessions, candor and integrity would require the doctor to advise the patient at the outset that he will violate his confidence and will inform law enforcement of their discussions." Id. at 514, 668 P.2d at 744-45, 194 Cal. Rptr. at 437-38.
\textsuperscript{157} A number of the statutes provide for reimbursement by the adult after an agency determination of eligibility. See infra Appendix, col. 14. Where the adult is unable to pay, or payment is not specified, services are presumably to be provided by the appropriate agency. The statutes do not provide for any additional funding to these already taxed agencies for the increased workload resulting from reports. \textit{Id.}
\textsuperscript{158} "We've solved every problem with legislation . . . We've passed seven acts against inflation. We've estimated injustice numerous times. We've solved the ecology problem. Every problem has been solved countless times by legislation. But the problems remain. Legislation doesn't work." A. TOFFLER, THE THIRD WAVE (1980) (quoted in Callahan, \textit{Elder Abuse Programming: Will It Help the Elderly?}, 15 URB. & SOC. CHANGE REV. 16 (No. 2 1982).
\textsuperscript{159} See infra notes 160, 191-212 for a discussion of pending legislation. A
take advantage of the history of other states' reporting mechanisms in order to enact legislation that will best address the problem.

IV. New York Developments

In 1985, three bills proposing mandatory reporting of elder abuse were introduced in New York's Assembly and Senate.160 When ex-

subcommittee of New York City's Coalition on Elder Abuse has been formed to assist in this process. Memorandum to Coalition Members from David Sambol, Chairman (Oct. 16, 1985) [hereinafter cited as Oct. 16, 1985 Memo]. The Policy & Legislation Subcommittee will draft proposed legislation to be submitted first to the Coalition and ultimately to the New York State Legislature. Meeting of Policy & Legislation Subcommittee of New York City Coalition on Elder Abuse (Nov. 6, 1985).

The Coalition on Elder Abuse was formed by professionals, public and private service providers and consumers to increase public awareness, encourage and support training of professionals and identify the current "state of the art" of elder abuse in New York City. Draft testimony of William Gould to Senate Standing Committee (Aug. 30, 1985); see Oct. 16, 1985 Memo, supra. It is co-sponsored by eight New York City agencies: Catholic Charities, Archdiocese of New York, Diocese of Brooklyn and Queens; Community Council of Greater New York; Federation of Jewish Philanthropies; Federation of Protestant Welfare Agencies; New York City Department for the Aging; New York City Human Resources Administration; and New York City Victim Services Agency. Id.

In the summer of 1985, the New York Standing Committee on Aging conducted a series of five public hearings on Elder Abuse. NEW YORK STANDING COMM. ON AGING, ELDER ABUSE: A HIDDEN PHENOMENON I (1986) [hereinafter cited as NEW YORK ELDER ABUSE REPORT]. These hearings were held in an effort to obtain information and collect data in order to formulate legislation to address the problem. Id. at 53. This report was available too late for inclusion in the body of this article, however, its compilation of recommendations received during the hearings indicates strong opposition to mandatory reporting legislation for New York. Id. at 61-63. As a direct result of these hearings, five new pieces of legislation have been created. Id. at 58. See notes infra 211, 212, 226 and 237 for a discussion of four of these proposed bills. The fifth bill, S.B. 7460, 209th Leg., Reg. Sess. (New York Feb. 18, 1986), would amend the public health law to require increased disclosure by applicants applying for positions with home health agencies and licensed home care services agencies as well as an affidavit concerning any prior convictions. S.B. 7460, 209th Leg., Reg. Sess. § 3620(1) (New York Feb. 18, 1986). The agencies would also have access to any prior conviction records of these applicants. S.B. 7460, 209th Leg., Reg. Sess. § 3620(2) (New York Feb. 18, 1986).

examined in conjunction with existing state law, many of their provisions appear redundant and unnecessary.\textsuperscript{161} After examining both existing law\textsuperscript{162} and the proposals,\textsuperscript{163} this Note concludes that the state's elderly will be best served if legislators were to enact meaningful amendments to existing law and not risk segregating the elderly further by creating legislation focused on the mandatory reporting of elder abuse.

A. Current New York Law

New York currently has a mandated Social Service program which is designed to prevent or remedy neglect, abuse, or exploitation of adults in need.\textsuperscript{164} Article 9B of New York's Social Services Law, the Adult Protective Services statute ("APS")\textsuperscript{165} provides for both voluntary and involuntary protective services to all adults who need such assistance, regardless of age. Included among the services that social services officials are authorized to provide are receiving and investigating reports, arranging medical and psychiatric services, arranging for protective placement or guardianship proceedings and other protective services that may be required by federal law.\textsuperscript{166} Such services may be provided on an involuntary basis to "endangered" adults.\textsuperscript{167} In


\textsuperscript{161} See infra notes 195-98 and accompanying text.

\textsuperscript{162} See infra notes 164-90 and accompanying text.

\textsuperscript{163} See infra notes 191-212 and accompanying text.

\textsuperscript{164} N.Y. Soc. Serv. Law § 473 (McKinney 1983) (providing that social service officials "shall provide protective services . . . to or for individuals without regard to income who, because of mental or physical dysfunction, are unable to manage their own resources, carry out the activities of daily living, or protect themselves from neglect or hazardous situations without assistance from others and have no one available who is willing and able to assist them responsibly"). A New York Supreme Court has broadly interpreted this section to include providing services to eligible adults even if they may have friends or relatives who could provide financial assistance. Saratoga Hosp. v. Ryan, 126 Misc. 2d 351, 353, 482 N.Y.S.2d 701, 703 (Sup. Ct. Saratoga County 1984) (acute care facility of hospital sought and was granted protective services of a 94 year old patient under Section 473); see also \textit{In re Kaufman}, 114 Misc. 2d 1078, 1080-81, 453 N.Y.S.2d 304, 306 (Sup. Ct. Bronx County 1982) (mere appointment of a conservator does not relieve the department of its mandated responsibilities).

\textsuperscript{165} Voluntary services are provided pursuant to section 473 and involuntary services are covered under section 473-a. N.Y. Soc. Serv. Law §§ 473, 473-a (McKinney 1983). The former refers only to "individuals" as those to be covered by the statute while the latter specifically refers to adults who are 18 and older. N.Y. Soc. Serv. Law §§ 473, 473-a(1)(a) (McKinney 1983).

\textsuperscript{166} N.Y. Soc. Serv. Law § 473(1)(a)-(f) (McKinney 1983).

\textsuperscript{167} "Endangered adult" is defined by the statute as a person, 18 or older who is in a situation which poses an imminent risk of serious harm to him or her and
order to provide such involuntary services, a special proceeding must be held to obtain a court order authorizing short term involuntary services.\textsuperscript{168} The law provides in great detail what must be included in the petition requesting the order.\textsuperscript{169} The petitioner, who must be a Social Services official,\textsuperscript{170} is required to show: (1) those services necessary to remedy the situation which is posing the risk;\textsuperscript{171} (2) that such services are not overbroad;\textsuperscript{172} and (3) that voluntary services have been tried and are inappropriate.\textsuperscript{173} The law also protects the individual's due process rights by requiring that the allegedly endangered adult be given notice of the petition and hearing date,\textsuperscript{174} advised of the right to counsel and assigned optional counsel if necessary.\textsuperscript{175} At the conclusion of the hearing, at which the adult is entitled to be present,\textsuperscript{176} the court must reach a conclusion based on clear and convincing evidence, with the burden of proof for all allegations on the petitioner.\textsuperscript{177} Should the order be granted, additional protections are provided. The order is granted for only seventy-two hours with one additional seventy-two hour extension if nec-

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lacks the capacity to comprehend the nature and consequences of remaining in that situation or condition. N.Y. Soc. Serv. Law § 473-a(1)(a)(i)-(ii) (McKinney 1983). The statute specifically provides that mere refusal to accept services or the existence of mental illness is not in itself sufficient evidence of lack of capacity.\textsuperscript{168} Id. § 473-a(1)(a)(ii)(a), (b).

168. Id. § 473-a(4)(a). The services to be provided are those set forth in section 473. See supra note 166 and accompanying text.

169. Id. § 473-a(4)(b)-(c).

170. Id. § 473-a(4)(a).

171. Id. § 473-a(4)(c)(ii).

172. Id.

173. Id. § 473-a(4)(c)(iv). Other facts required for the petition are: that the adult is "endangered" as defined in the statute, id. § 473-a(4)(c)(i); that the services are necessitated by the condition, id. § 473-a(4)(c)(ii); that if a change in physical location is being applied for, no other remedy is appropriate, id. § 473-a(4)(c)(v); existence of any potential conflict with the adult’s religious beliefs, id. § 473-a(4)(c)(vi); that reasonable efforts have been made to handle any language problems, id. § 473-a(4)(c)(vii); that no prior application for relief has been made, or if so, that new facts warrant a renewal of the application, id. § 473-a(4)(c)(viii).

174. Id. § 473-a(5). In order to commence the proceeding, the petitioner must serve an order to show cause, the petition, and any supporting affidavits. Id. § 473-a(5)(a). In bold type, the order to show cause must set forth the following: WARNING

IF YOU DO NOT APPEAR IN COURT YOUR LIFE AND LIBERTY MAY BE SERIOUSLY AFFECTED. FOR FREE INFORMATION CONCERNING YOUR LEGAL RIGHTS CALL OR VISIT

Id. § 473-a(5)(b)(i).

175. Id. § 473-a(5)(b)(iv).

176. Id. § 473-a(7)(b).

177. Id. § 473-a(9).
Additionally, the services provided may not be broader than those necessary to remedy the situation and notice of the court's decision must be given to the adult personally. The law also provides for expedited appeals.

While the statute itself does not specifically mention elders, the legislative history to recent amendments indicates that the legislators specifically intended coverage for elders. In 1984, the statute was amended to include an immunity provision for any person who, based on a good faith belief that an adult was endangered or in need of protective services, reports that information or subsequently testifies to that report. The legislative history indicates that the intent of this enactment was to encourage the reporting of elderly abuse cases by protecting individuals who report or testify in those cases by granting them immunity.

In summary, New York currently has in place a law which provides protective services for all adults, including elders, who are in need of such services. It does so without segregating elders by not limiting such services to those who have attained a particular age, basing its coverage on need, not a number. In addition, it provides for involuntary services in emergency situations—when the adult is

178. Id. § 473-a(10)(f). To obtain a renewal, petitioner must show the court that continuation is necessary to remedy the original situation. Id. No additional renewals are permitted. Id.
179. Id. § 473-a(10)(g).
180. Id. § 473-a(10)(h). If personal service is not possible then the court has the responsibility of providing an alternative means of notifying the adult. Id.
181. Id. § 473-a(11).
182. See supra notes 164, 167 and accompanying text.
183. The 1981 amendment added the involuntary services section. N.Y. Gov. Exec. Mem., 1981 McKinney Sess. Laws 2641 (July 31, 1981). Governor Hugh Carey, in approving the amendment, explained that "social services departments are occasionally confronted with persons who are living in dangerous surroundings or suffering from debilitating medical conditions, but who refuse to accept assistance because they are unable to appreciate the gravity of the situation due to advanced age, illness or mental impairment." Id. (emphasis added); see also infra note 185 and accompanying text (discussing the legislative history to the 1984 amendment).
185. A memorandum to the proposed legislation states that it grew out of the Alliance Report. Memorandum of Sen. Tarky J. Lombardi, Jr., 1984 NYSL ANNUAL 190 (1984). Governor Cuomo also specifically referred to elder abuse in his approval memorandum. N.Y. Gov. Exec. Mem., 1984 McKinney Sess. Laws 3616 (July 24, 1984). Interestingly, the law enacted was an improved version of a bill the Governor had disapproved the previous year. Disapproval Memorandum No. 69, NYSL ANNUAL 459 (1983). One of the reasons for the Governor's disapproval of the earlier bill was the belief that it intentionally demeaned seniors since it was age-based. Id. The rejected bill provided immunity for the reporting of abuse of persons over sixty years of age. Id.
186. See supra notes 164-81 and accompanying text.
187. See supra notes 164-67 and accompanying text.
in serious danger or is unable to give the necessary consent to services.\textsuperscript{188} In doing so, it balances the state's obligation to protect the health of its citizens with the individual's right to self-determination by providing substantive procedural safeguards.\textsuperscript{189} Finally, it attempts to encourage reporting by providing immunity to individuals who make a good faith report.\textsuperscript{190}

The statute is not without flaws, and amendments may enhance its effectiveness. The question is, however, whether an additional reporting statute specifically mandating the reporting of abuse and neglect toward elders is necessary. To answer that question, it is necessary to look at the current mandatory reporting proposals.

B. Proposed New York State Legislation

Three bills were initiated in 1985 by two assemblypersons and a senator to address the reporting of adult abuse and neglect.\textsuperscript{191} All require mandatory reporting by professionals\textsuperscript{192} and are age-based.\textsuperscript{193} Because the emphasis is on mandatory reporting, all these bills include civil penalties for the failure to make a report.\textsuperscript{194}

There are a number of areas where these bills overlap with New York's existing APS Statute.\textsuperscript{195} Each of the three define the protective

\textsuperscript{188} See supra note 167 and accompanying text.
\textsuperscript{189} See supra notes 168-81 and accompanying text.
\textsuperscript{190} See supra note 184 and accompanying text.
\textsuperscript{191} See supra note 160.
\textsuperscript{195} N.Y. SOC. SERV. LAW §§ 473, 473-a (McKinney 1983).
services to be provided as those enumerated in the APS statute.\textsuperscript{196} Involuntary services are to be provided in accordance with the procedures outlined in the existing statute.\textsuperscript{197} In addition, the assembly bills provide immunity for reporters.\textsuperscript{198}

One of the main distinctions between the three bills and the existing APS statute is that they contain a more detailed description of reporting and follow-up procedures.\textsuperscript{199} They also permit court-ordered entry of the premises if access is denied,\textsuperscript{200} and injunctions against caretakers who refuse to allow services.\textsuperscript{201} Such provisions might be helpful to assure that the elder is not prevented from receiving needed services.


\textsuperscript{198} See supra notes 167-81 and accompanying text.


\textsuperscript{199} The bills specify that the reports are to contain the name and address of the elder, information regarding the nature and extent of the abuse, neglect, exploitation or abandonment as well as any other information that may be relevant. S.B. 6011, 208th Leg., Reg. Sess. § 311(2) (New York May 8, 1985); A.B. 4108 208th Leg., Reg. Sess. § 312(2) (New York Feb. 26, 1985); A.B. 5492, 208th Leg., Reg. Sess. § 312(2) (New York Mar. 5, 1985). Reports are to be made within either three, A.B. 5492, 208th Leg., Reg. Sess. § 312(1) (New York Mar. 5, 1985); four, A.B. 4108, 208th Leg., Reg. Sess. § 312(1) (New York Feb. 26, 1985); or five, S.B. 6011, 208th Leg., Reg. Sess. § 311(1) (New York May 8, 1985), days. All of the proposals require a prompt investigation of reports, which is to be conducted by the local department of social services and shall include a visit with the elder and consultations with individuals having knowledge about the case. S.B. 6011, 208th Leg., Reg. Sess. § 312(1) (New York May 8, 1985); A.B. 4108, 208th Leg., Reg. Sess. § 313(1) (New York Feb. 26, 1985); A.B. 5492, 208th Leg., Reg. Sess. § 313(1) (New York Mar. 5, 1985). Upon completion of an investigation written findings are to be prepared which shall include recommended action as well as a determination as to the need for protective services. S.B. 6011, 208th Leg., Reg. Sess. § 312(3) (New York May 8, 1985); A.B. 4108, 208th Leg., Reg. Sess. § 313(3) (New York Feb. 26, 1985); A.B. 5492, 208th Leg., Reg. Sess. § 313(3) (New York Mar. 5, 1985). The Assembly bills provide that within ten days of referral the Department of Social Services shall provide an outline of an intended plan of services to the local department, providing them with the right to comment. A.B. 4108, 208th Leg., Reg. Sess. § 315(2) (New York Feb. 26, 1985); A.B. 5492, 208th Leg., Reg. Sess. § 315(2) (New York Mar. 5, 1985).

\textsuperscript{200} A finding of probable cause that the elder is being abused, maltreated or neglected is necessary to obtain a court order. S.B. 6011, 208th Leg., Reg. Sess. § 312(2) (New York May 8, 1985); A.B. 4108, 208th Leg., Reg. Sess. § 313(2) (New York Feb. 26, 1985); A.B. 5492, 208th Leg., Reg. Sess. § 313(2) (New York Mar. 5, 1985).

\textsuperscript{201} S.B. 6011, 208th Leg., Reg. Sess. § 313(3) (New York May 8, 1985); A.B.
The three bills also would utilize a statewide central registry. Such a registry would be essential to maintain consistent information and statistical data. However, the proposals vary in the protection they afford the information contained in such a registry.

The proposed assembly bills specify that cases are to be reviewed periodically and progress reports prepared. Such a procedure would serve an important function in assuring that the services continued to meet the individual's needs and would prevent the individual from getting lost in the system.

Contrary to the existing APS statute, which does not address the issue of reimbursement for the costs of providing services, the assembly proposals provide that the Department of Social Services shall adopt regulations to determine the financial eligibility of the

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203. See supra note 89 and infra note 229 and accompanying text.

204. The Skelos bill in the Senate simply provides that neither the original report nor the evaluation shall be a public record, and that the name of the reporter shall not be disclosed. S.B. 6011, 208th Leg., Reg. Sess. § 312(5) (New York May 8, 1985). The Weinstein bill has the same protections as the Skelos bill and additionally provides that subjects and named persons may receive a copy of all the information contained in the central register. A.B. 4108, 208th Leg., Reg. Sess. §§ 313(5), 320(4) (New York Feb. 26, 1985). The Saland bill is the most comprehensive in this area. In addition to the protections of the other two proposals it: lists those individuals who are permitted access; provides that unfounded reports have identifying information expunged; requires that records be expunged 10 years after the death of the elder; and specifies that the commissioner may amend or expunge any record upon a good cause showing and notice to subjects. A.B. 5492, 208th Leg., Reg. Sess. §§ 313(5), 320(4)-(7) (New York Mar. 5, 1985). In addition, the bill also provides that the subject may request to have the record amended or expunged and if the request is denied the individual is entitled to a hearing on the matter. Id. § 320(e)(8).

205. A.B. 4108, 208th Leg., Reg. Sess. § 317 (New York Feb. 26, 1985) (provides for reviews every three months the first year and semi-annual reviews thereafter, with progress reports to be made monthly); A.B. 5492, 208th Leg., Reg. Sess. § 317 (New York Mar. 5, 1985) (provides for an initial review within 45 days to determine whether the continuation or modification of services is necessary; thereafter evaluations are made every 90 days).

206. Care must be taken to prevent service providers from getting too bogged down in paperwork so that effective administration of services does not suffer. See generally University Center on Aging, Working With Abused Elders: Assessment, Advocacy, and Intervention 54 (1984). This manual was created as a result of the Three Model Projects Program. For a discussion of that program,
elder to pay for such services.\textsuperscript{207} The costs of these services and administration of a reporting program cannot be met in full this way.\textsuperscript{208} If the legislature is contemplating a reporting statute it should consider the increased costs that will result and take steps to ensure their coverage. Even without the enactment of a reporting statute the state would do well to consider increasing the funding for protective services.\textsuperscript{209} Since stress in the home has been named as one of the leading causes of elder abuse,\textsuperscript{210} increasing the funding for programs that would alleviate this stress would have a direct influence on reducing the problem.\textsuperscript{211}

Finally, while none of the proposals explicitly legislates penalties for abusive caretakers, they do specify that, if necessary, such information will be referred to the appropriate district attorney and/or the Attorney General.\textsuperscript{212} Arguably, this provision may be more detrimental than helpful. An adult can prosecute without statutory authorization. However, if an elder knows that this information is going to be turned over to the authorities, he may be hesitant to permit the investigation.

\textsuperscript{208} The fact that an elder is financially dependent upon a caretaker has been cited as a possible aggravating factor of abuse. BLOCK & SINNOTT, supra note 10, at 54-55; Falcioni, supra note 18, at 209. Thus, in many instances, elders would not have the resources to pay for necessary services.
\textsuperscript{209} The lack of funding has been cited as a reason why the Elder Abuse Project, for example, has not been expanded beyond two community districts in the Bronx, despite the urgent need for increased services. Interview with Risa Breckman, supra note 49.
\textsuperscript{210} Lau & Kosberg, supra note 16, at 13; see Steinmetz, supra note 16, at 8.
\textsuperscript{211} Increasing state aid for community service projects for the elderly in the area of respite care, case management and home health care would reduce stress in the home by assisting the caretaker in tending to a dependent elder, and giving the caretaker the opportunity for additional personal freedom. A bill has been introduced in the Senate to amend the executive law in order to increase such funding. S.B. 7115, 209th Leg., Reg. Sess. (New York Jan. 22, 1986). This bill adds \textquoteleft\textquoteleft[a]n additional state reimbursement of four dollars for each elderly person residing in the county or thirty-two thousand dollars, whichever is greater, \ldots for respite care, case management, especially services necessary to carry out a plan of protective services, and home health care. ld. § 1(1)(ii).
\textsuperscript{212} S.B. 6011, 208th Leg., Reg. Sess. § 314 (New York May 8, 1985); A.B. 4108, 208th Leg., Reg. Sess. § 319 (New York Feb. 26, 1985); A.B. 5492, 208th Leg., Reg. Sess. § 319 (New York Mar. 5, 1985). As a result of the hearings recently conducted by New York's Senate Committee on Aging, Senator Skelos has proposed an amendment to the penal law which would make the abuse of an elderly or disabled adult a Class A misdemeanor. Elder Abuse Coalition Meeting
C. Legislative Recommendations for New York

A number of the provisions in the proposed New York bills could be effectively incorporated into the existing APS statute. This can be done without the creation of an age-based mandatory reporting statute which may have a prejudicial impact on elders.213

The following recommendations have been selected from the proposed New York bills as well as various other states' statutes and in the author's view represent the best features of the various reporting statutes which are currently lacking in New York's Adult Protective Services law.

1. Continuance of a Voluntary Reporting System with Enhanced Community Awareness and Administrative Procedures

Although the research in this area has been limited, there appears to be no relationship between laws mandating reporting by certain individuals and those who are, in reality, reporting.214 The function of reporting adult abuse and neglect is twofold: “(1) to generate data on abuse which can be used in developing services for victims and their families, and (2) to ensure that victims have access to services they need.”215 If reporting is done by those not required to report, use of a mandatory reporting statute appears to do nothing to further these goals. Conversely, the imposition of a mandatory reporting requirement raises a number of negative implications.216 Legislation which would clarify the scope and intent of the statute

(180x671)
would be more helpful. A definitional section would clarify the situations in which protective services would be necessary. A more standardized system of reporting and follow-up procedures should also be developed. Here it may be helpful to adopt a coordinating agency approach to oversee the reporting system. While local agencies would retain primary responsibility for investigations or the provision of services, this central agency would act in a supervisory capacity and as a clearinghouse for information. A statewide toll-free number would assist individuals who desire to file a report with the central agency. Reports received could then be referred to the local agency for investigation and follow-up. Investigations should include a visit with the adult as well as anyone else that might be able to provide helpful information. The local agencies should be required to submit to the central agency details not only of their investigation but also of subsequent action taken.

Mandatory reporting statutes, by themselves, have not been a salient factor in increasing reports of abuse. Rather, the community education programs that have often accompanied these enactments are perceived as having a substantial influence on a person's willingness to report. Instead of imposing a mandatory reporting

217. While a declaration of purpose is technically not binding on anyone, it may be of great help in determining the actual course of practice. Paulsen, Child Abuse Reporting Laws: The Shape of the Legislation, 67 COLUM. L. REV. 1, 15 (1967).
218. For discussion of coverage under the APS statute, see supra note 164. For example, it may be helpful to define the terms "neglect" or "hazardous conditions." For pending legislation which provides assistance in this area, see infra note 237.
219. The current statute does not specify the types of reports that are to be made and how they are to be investigated. In fact, the current statute addresses the issue of reporting indirectly, mentioning it only in the course of duties covered by the commissioner, and in the immunity provision. See N.Y. SOC. SERV. LAW §§ 473(1)(a), 473-b (McKinney 1983 & Supp. 1986).
220. The current statute provides that each local department of social services prepare an annual plan for the provision of adult protective services for submission to the commissioner for state reimbursement purposes. N.Y. SOC. SERV. LAW § 473(2)(b) (McKinney 1983).
221. If a central abuse registry were maintained, the Department could evaluate the effectiveness of the program, assist local agencies in the development of services, and obtain reports involving prior abuse that occurred in other parts of the state.
222. Six states currently provide such access: Arkansas, Florida, Indiana, Missouri, Nebraska and West Virginia. See infra Appendix, col. 13.
224. ALLIANCE REPORT, supra note 16, at 19.
225. Id.
statute to achieve this effect, the legislature should consider adopting an amendment to New York’s current APS statute providing for a publicity and education program to assist in the recognition of the elder abuse problem.\textsuperscript{226}

Finally, one of the main impediments to effectively addressing the needs of the elderly population is the lack of sufficient funding.\textsuperscript{227} Legislation should be enacted to insure that the state reimburses the counties in order to assist them in providing the elders with protective services.\textsuperscript{228}

2. Statewide Registry and Confidentiality Protection

The maintenance of a statewide registry is integral to the success of the reporting system.\textsuperscript{229} The agency should maintain complete records of all investigations concerning abuse and neglect, as well as copies of the initial reports. In New York State such a registry can be created simply by expanding the present child abuse system to include a data base for adult abuse.\textsuperscript{230} Reports generated as a result of an investigation should be classified as either founded or unfounded.\textsuperscript{231} Identifying information in an unfounded report would be expunged immediately.\textsuperscript{232} In order to maintain the confidentiality of the reports, provisions should be included to allow access only by authorized individuals after the redaction of personal informa-

\begin{flushright}
\footnotesize
\textsuperscript{226} Senator Skelos has recently introduced S.B. 7461, 209th Leg., Reg. Sess. (New York Feb. 18, 1986) which would amend New York’s APS statute, giving the Department authority to promulgate regulations for such programs. S.B. 7461 passed the Senate on March 11, 1986, and was given to the Assembly for consideration. On March 12, 1986, it was referred to the Social Services Committee. \textsc{State of New York Legislative Digest} vol. 1 (1986).
\textsuperscript{227} See supra note 49 and accompanying text.
\textsuperscript{228} See supra notes 208-11 and accompanying text.
\textsuperscript{229} The Alliance Report found that of the 11 states with a provision for a central registry, eight considered it an essential part of the reporting system. \textsc{Alliance Report}, supra note 16, at 5. It was pointed out that the registry serves several purposes: (1) it allows access to information on previous abuse; (2) it provides statistics on the number and types of abuse; and (3) it assists service workers from other states in obtaining information on abused/neglected individuals that had formerly lived in the home state. \textit{Id}.
\textsuperscript{230} \textsc{N.Y. Soc. Serv. Law} \textsection 422 (McKinney 1983).
\textsuperscript{231} See, e.g., \textsc{Fla. Stat. Ann.} \textsection 415.103(3)(c) (West Supp. 1986) ("[u]pon completion of its investigation, the local office of the department [of Health & Rehabilitative Services] shall classify reports either as ‘indicated’ or ‘unfounded.’ All identifying information in the abuse registry maintained in an unfounded report shall be expunged immediately").
\textsuperscript{232} \textit{Id}. Provision should also be made for expungement from the registry of identifying information after a specified number of years from the last report or for sealing the record at that time. \textit{Id}. (specifies seven years); \textit{see also} \textsc{N.Y. Soc. Serv. Law} \textsection 422(6) (McKinney 1983) (child abuse registry provision specifying that records be sealed ten years after subject’s 18th birthday); A.B. 5492, 208th Leg.,
tion. Individuals who are subjects of a report should be entitled to review their file maintained by the agency and be given the opportunity to correct, amend or expunge as necessary. The name of the person filing a report should remain confidential unless it is necessary to reveal it in connection with a judicial proceeding.

3. Annual Report to the Legislature

While an annual report to the legislature does not directly concern the implementation of an APS statute, it nevertheless serves an important function. Given the interest of legislators and others in the issue of mandatory reporting by professionals, it is important to keep lawmakers informed of how the existing legislation is working and of the problems that still exist. This report would give the agency an opportunity to analyze the effectiveness of the statute and suggest possible reforms, thereby providing the legislature with the best tools for determining whether a mandatory system should be adopted. Only three states currently provide for an annual report to the legislature designed to keep them informed about elderly abuse. Statistics such as projected costs, the number and types of reports, the professional status of the reporter, the types of protective services that are being provided and recommendations for improvements in the system are some of the potential benefits that an annual report can provide.

V. Conclusion

While elder abuse is a problem that must be confronted by the New York legislature, a mandatory reporting law is not a solution. These laws do not appear to increase reporting among those who are mandated to report and are therefore ineffective. More impor-


233. Such individuals might include employees of the agency responsible for carrying out the investigation, or subsequent protective services; law enforcement agents carrying out an investigation; the state attorney; the subjects of the report or their guardian, custodian, guardian ad litem, or lawyer; a court, limited to an in camera inspection; persons engaged in bona fide research; and professionals engaged in treatment. See, e.g., Fla. Stat. Ann. § 415.107(2) (West Supp. 1986).

234. See supra note 132 and accompanying text.


tantly, they may harm the elderly by creating age discrimination and further infantilizing the elderly by limiting the elder's freedom to control his or her own life. By providing an ineffective response to the problem, the legislature precludes the adoption of more effective measures. Instead, identifying the problem and developing services to combat it should be a top priority. Recognizing that there are vulnerable individuals of every age who need protection, laws should be designed to educate the community in general and assist these individuals in particular. This can be done without the imposition of an age-based mandatory reporting system, a reaction that has a potential for doing more harm than good.

New York can take advantage of its existing adult protective services program to provide a framework for a legal solution to elder abuse. With modifications, it can effectively assist in combatting abuse and neglect without further stigmatizing its elderly population. New York has the opportunity to review the strengths and weaknesses of its own APS statute as well as other states' existing reporting statutes to implement reforms that will make New York's adult protective services system the model to follow.

Dyana Lee

18, 1986). The bill requires the Council to submit a report to the Governor, the temporary president of the Senate and Speaker of the Assembly within one year of the Council's first meeting. Id. § 545(8). The primary duty of the Council would be to:

research, evaluate, and make recommendations to improve and monitor coordination of programs and fiscal resources for the prevention and resolution of elder abuse, neglect, abandonment, and exploitation. In doing this, it shall (i) identify problems and deficiencies in the service programs and, on a selective basis, plan and make recommendations to remedy such problems and deficiencies, including the recommendation of legislative changes or additions, (ii) review and resolve differences, if any, concerning rules and regulations of each member agency insofar as such rules and regulations impact on services provided by member and other agencies, (iii) make recommendations for inter-agency information exchange and linkages, and (iv) perform all other things necessary and convenient to carry out the functions, powers, and duties of the council and to effectuate the purposes of this section.

Id. § 545(6). This proposed legislation also sets forth definitions of elder, abuse, caregiver, exploitation, neglect, physical harm and abandonment. Id. § 545(5).
## APPENDIX

<table>
<thead>
<tr>
<th>State</th>
<th>Date Effective</th>
<th>Coverage (Age)</th>
<th>Type of Report</th>
<th>Agency Responsible</th>
<th>Time to Report/ Investigate</th>
<th>Penalties Repr.</th>
<th>Immunity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>1976</td>
<td>18 + 38.9.1-38.9.11</td>
<td>Mandatory</td>
<td>Dept. of Pensions + Security</td>
<td>38.9.8</td>
<td>Not provided/ misdemeanor</td>
<td>$38.9.7</td>
</tr>
<tr>
<td>Alaska</td>
<td>1983</td>
<td>65 + 47-24-100</td>
<td>Mandatory</td>
<td>Dep. of Health &amp; Soc. Serv.</td>
<td>47.24.010</td>
<td>Fine only</td>
<td>Yes, civil or criminal</td>
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<tr>
<td>Arizona</td>
<td>1980</td>
<td>Not specified</td>
<td>Mandatory</td>
<td>Not specified</td>
<td>Immed., written within 48 hours</td>
<td>30-3-1</td>
<td>Yes</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1977</td>
<td>18 + 59-1301</td>
<td>Mandatory</td>
<td>Dept. of Hum. Serv. 59-1301</td>
<td>Immed., written within 48 hours 30-3-1</td>
<td>Misdemeanor</td>
<td>Yes, civil or criminal</td>
</tr>
<tr>
<td>California</td>
<td>1983 (amended</td>
<td>65 + 9380</td>
<td>Mandatory</td>
<td>Dept. of Soc. Serv. 9384</td>
<td>Immed., written within 36 hours 30-3-1</td>
<td>Not provided</td>
<td>Yes, civil or criminal</td>
</tr>
<tr>
<td>Colorado</td>
<td>1983</td>
<td>65 + 26-3.1-101</td>
<td>Voluntary</td>
<td>Not specified</td>
<td>Immed., written within 48 hours 30-3-1</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1983</td>
<td>60 + 46a-14</td>
<td>Mandatory</td>
<td>Commissioner on Aging 46a-15(a)</td>
<td>Within 5 days 30-3-1</td>
<td>Not provided/ referred to state's attorney</td>
<td>$46a-14</td>
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<tr>
<td>Delaware</td>
<td>1982</td>
<td>18 + 3902(1)</td>
<td>Mandatory</td>
<td>Dept. of Health &amp; Soc. Serv. 3902(15)</td>
<td>Not specified/ promptly 3910</td>
<td>Not provided</td>
<td>Not provided</td>
</tr>
<tr>
<td>Florida</td>
<td>1973</td>
<td>Not specified (specifically includes aged persons) 415.103</td>
<td>Not specified</td>
<td>Dep. of Health &amp; Rehab. Serv. 415.102</td>
<td>Immed., written within 48 hours 415.103</td>
<td>Misdemeanor</td>
<td>Yes, good faith</td>
</tr>
<tr>
<td>Georgia</td>
<td>1981</td>
<td>18 + 30-5-3</td>
<td>Mandatory</td>
<td>Dept. of Hum. Res. 30-5-3</td>
<td>Not provided/ promptly 30-5-3</td>
<td>Misdemeanor</td>
<td>Yes, if good faith</td>
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<tr>
<td>Hawaii</td>
<td>1981</td>
<td>65 + 349C-1</td>
<td>Mandatory</td>
<td>Dept. of Soc. Serv. 349C-2</td>
<td>Prompt verbal, then written 349C-3</td>
<td>Not provided</td>
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<td>Idaho</td>
<td>1982</td>
<td>60 + 39-5302</td>
<td>Mandatory</td>
<td>Dept. of Health &amp; Welfare 39-5302</td>
<td>Within 24 hours 39-5302</td>
<td>Referral to state attorney 39-5302</td>
<td>Yes, if good faith</td>
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<td>Illinois</td>
<td>1984</td>
<td>60 + 23-603</td>
<td>Not applicable; demonstration program developed 23-603</td>
<td>Dep. of Aging 23-603</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, civil if good faith</td>
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<tr>
<td>Indiana</td>
<td>1985</td>
<td>18 + ref. to &quot;old age&quot; 4-27-7-2</td>
<td>Mandatory</td>
<td>County dep. of public welfare 47-27-7-1</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, civil or criminal, if good faith</td>
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*Two Idaho 1982 acts, chapters 181 and 286 purported to create a new chapter 52. The compiler has indicated this discrepancy with the use of brackets.
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<td>Confidentiality of Records</td>
<td>Protective Services Offered</td>
<td>Consent Required</td>
<td>Emergency Services</td>
<td>Central Registry</td>
<td>Payment of Services</td>
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<td>Not provided</td>
<td>Yes $ 38.9.6</td>
<td>Yes $ 38.9.6</td>
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<td>Yes, on petition $ 38.9.5</td>
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<td>Not provided</td>
<td>Yes $ 47.24.050</td>
<td>Yes $ 47.24.050</td>
<td>Yes, to investigate $ 47.24.050</td>
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<td>Not provided</td>
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<td>Yes, except clergy § 46-453</td>
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<td>Yes $ 46-453</td>
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<td>Yes, except attorney § 59-1312</td>
<td>Yes $ 59-1314</td>
<td>Yes $ 59-1308</td>
<td>Not provided</td>
<td>Yes, not to exceed 24 hours without due process protections § 59-1308</td>
<td>Yes, with statewide toll-free phone number, and confidentiality provisions § 59-1314</td>
<td>Not provided</td>
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<td>Yes § 9382</td>
<td>Not provided</td>
<td>Yes $ 9382(1)</td>
<td>Yes, of seniors, for investigation § 9383</td>
<td>Not provided</td>
<td>No, but each county to notify Dept. of reports rec'd. § 9384</td>
<td>Not provided</td>
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<td>Not provided</td>
<td>Not provided</td>
<td>Yes $ 26-3.1-102</td>
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<td>Not provided</td>
<td>Not provided</td>
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<td>Not provided</td>
<td>Yes $ 46a-16, access w/ elder consent § 46a-18</td>
<td>Yes $ 46a-17</td>
<td>Yes, for services, may apply to court §§ 46a-17, 46a-19</td>
<td>Yes, may petition for guardians, § 46a-19, due process protections, § 46a-20</td>
<td>Yes, Reimbursement procedures if eligible § 46a-23</td>
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<td>Not provided</td>
<td>Not provided</td>
<td>Yes $ 3903</td>
<td>Yes, for services § 3905</td>
<td>Yes § 3906</td>
<td>Not provided</td>
<td>Reimbursement procedures if eligible § 3904</td>
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<td>Yes, release to unauthorized persons § 415.107; unauth. disclosure, misdemeanor § 415.111(2)</td>
<td>Yes $ 415.105</td>
<td>Yes, to investigate, and for services $ 415.105 (3)(a)</td>
<td>Yes $ 415.105 (3)(b), hearing required § 415.105(3)(c)</td>
<td>Yes, with statewide toll-free number § 415.105(3)(a)</td>
<td>County funds, with state + fed. matching funds § 415.106</td>
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<td>Not provided</td>
<td>Yes $ 30-5-7</td>
<td>Yes $ 30-5-5</td>
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<td>Yes, unauthorized disclosure, misdemeanor § 349C-8</td>
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<td>Not provided</td>
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<td>Yes § 349C-5</td>
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<td>Not provided</td>
<td>Yes, disclosure requires consent §§ 139-5303(3)(a) 39-5203(5), 39-5303(5) 39-5303(6)</td>
<td>Not provided</td>
<td>Yes § 139-5303(4)(b) 39-5303(4)</td>
<td>Not provided</td>
<td>Reimbursement procedures if eligible §§ 139-5306 39-5206</td>
<td>Not provided</td>
</tr>
<tr>
<td>Not provided</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Not provided</td>
</tr>
<tr>
<td>Yes, except attorney § 4-27-7-9</td>
<td>Yes $ 4-27-7-9</td>
<td>Yes $ 4-27-7-6</td>
<td>Yes, may petition court § 4-27-7-11</td>
<td>Yes § 4-27-7-11</td>
<td>No, but statewide toll-free number § 4-27-7-9</td>
<td>Not provided</td>
</tr>
<tr>
<td>State</td>
<td>Date Effective</td>
<td>Coverage</td>
<td>Type of Report</td>
<td>Agency Responsible</td>
<td>Time to Report/Investigator</td>
<td>Penalties Rev./Abuser</td>
</tr>
<tr>
<td>---------------</td>
<td>----------------</td>
<td>-------------------</td>
<td>----------------</td>
<td>-----------------------------</td>
<td>----------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Iowa</td>
<td>1978</td>
<td>Mandatory</td>
<td>Dept. of Hum. Serv.</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Missouri</td>
<td>1980</td>
<td>Mandatory</td>
<td>P. dept., sheriff.</td>
<td>Immed.</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1981</td>
<td>Mandatory</td>
<td>Dept. of Soc. Serv.</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Missouri</td>
<td>1982</td>
<td>Mandatory</td>
<td>Dept. of Soc. Serv.</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Montana</td>
<td>1982</td>
<td>Mandatory</td>
<td>Dept. of Health &amp; Hum. Res.</td>
<td>Oral imm. then written</td>
<td>Fine or imprisonment</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Nevada</td>
<td>1981</td>
<td>Mandatory</td>
<td>Dept. of Hum. Serv.</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1982</td>
<td>Mandatory</td>
<td>Dept. of Health &amp; Hum. Res.</td>
<td>Immed.</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1982</td>
<td>Mandatory</td>
<td>Dept. of Hum. Serv.</td>
<td>Promptly</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>North Carolina</td>
<td>1973</td>
<td>Mandatory</td>
<td>County Dept. of Soc. Serv.</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Ohio</td>
<td>1978</td>
<td>Mandatory</td>
<td>County Dept. of Welfare</td>
<td>Immed.</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1981</td>
<td>Mandatory</td>
<td>Dept. of Health &amp; Hum. Res.</td>
<td>Immed.</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Texas</td>
<td>1982</td>
<td>Mandatory</td>
<td>Dept. of Elderly Affairs</td>
<td>Not provided</td>
<td>Fine</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Utah</td>
<td>1982</td>
<td>Mandatory</td>
<td>Dept. of Health &amp; Hum. Res.</td>
<td>Immed.</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Washington</td>
<td>1981</td>
<td>Mandatory</td>
<td>Dept. of Public Welfare</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1982</td>
<td>Mandatory</td>
<td>Dept. of Education</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1981</td>
<td>Mandatory</td>
<td>County Dept. of Social Services</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Yes, if good faith</td>
</tr>
</tbody>
</table>

**Notes:**
- The table lists laws for various states regarding the reporting of abuse or neglect of elderly or disabled persons.
- The columns include State, Date Effective, Coverage, Type of Report, Agency Responsible, Time to Report/Investigator, Penalties Rev./Abuser, and Immunity.
- The coverage types include mandatory, voluntary, and not provided.
- The agencies responsible include various departments and services.
- The time to report/investigate ranges from not provided to within 24 hours.
- The penalties rev/abuser include fines, imprisonment, and various other penalties.
- The immunity varies by state, ranging from no immunity to immunity if good faith.
<table>
<thead>
<tr>
<th>Column 8</th>
<th>Column 9</th>
<th>Column 10</th>
<th>Column 11</th>
<th>Column 12</th>
<th>Column 13</th>
<th>Column 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abrogation of Privileges</td>
<td>Confidentiality of Records</td>
<td>Protective Services Offered</td>
<td>Consent Required</td>
<td>Emergency Services</td>
<td>Central Registry</td>
<td>Payment of Services</td>
</tr>
<tr>
<td>Yes</td>
<td>$ 209.060</td>
<td>Yes, for services $ 209.030(7), may petition court $ 209.110</td>
<td>Yes, guardian appointed</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Expansion of child abuse registry $ 235B.1(1)(c)</td>
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<tr>
<td>Yes</td>
<td>$ 3481</td>
<td>Yes, for services § 3481; may petition court § 3482</td>
<td>Yes, includes due process protections § 20</td>
<td>Not provided</td>
<td>Financial eligibility determination § 3484</td>
<td></td>
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<tr>
<td>No provided</td>
<td>Not provided</td>
<td>No provided</td>
<td>No provided</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Not provided</td>
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<tr>
<td>Yes</td>
<td>$ 400.11c(3)</td>
<td>Yes, disclosure on consent § 400.11b(6)</td>
<td>Not provided</td>
<td>Yes, may appoint temp. guardian § 400.11b(6)</td>
<td>Not provided</td>
<td>Financial eligibility determination § 3484</td>
</tr>
<tr>
<td>Yes</td>
<td>$ 626.557(c2)</td>
<td>Yes, disclosure on consent § 626.557(c)</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Financial eligibility determination § 3484</td>
<td></td>
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<tr>
<td>Yes</td>
<td>$ 626.557(d5)</td>
<td>Yes, for services § 626.557(d5)</td>
<td>Not provided</td>
<td>Not provided</td>
<td>Financial eligibility determination § 3484</td>
<td></td>
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<tr>
<td>Yes</td>
<td>$ 28-713</td>
<td>Not provided</td>
<td>Yes, to investigate § 28-7-12</td>
<td>Not provided</td>
<td>Financial eligibility determination § 27-7-12</td>
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<tr>
<td>Yes</td>
<td>$ 161-D:3c</td>
<td>No provided</td>
<td>No provided</td>
<td>No provided</td>
<td>Reimbursement procedures § 161-D:3c</td>
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</table>

For services, if funds are available § 403.2(2)
<table>
<thead>
<tr>
<th>State</th>
<th>Date Effective</th>
<th>Coverage Age</th>
<th>Type of Report</th>
<th>Agency Responsible</th>
<th>Time to Report/Investigate</th>
<th>Penalties Rptr./Abuser</th>
<th>Immunity</th>
</tr>
</thead>
<tbody>
<tr>
<td>OREGON</td>
<td>1981</td>
<td>65 +</td>
<td>Mandatory</td>
<td>Dept. of Hum. Res.</td>
<td>Immed. verbal or written</td>
<td>Fine</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>SOUTH CAROLINA</td>
<td>1979</td>
<td>age not specified but mentions &quot;senility&quot;</td>
<td>Mandatory</td>
<td>Dept. of Soc. Serv.</td>
<td>Immed. verbal</td>
<td>Fine</td>
<td>Yes, civil or criminal if in good faith</td>
</tr>
<tr>
<td>TENNESSEE</td>
<td>1978</td>
<td>18 + (incl. &quot;advanced age&quot;)</td>
<td>Mandatory</td>
<td>Dept. of Hum. Serv.</td>
<td>Immed. verbal or written</td>
<td>Fine</td>
<td>Yes, good faith preserved</td>
</tr>
<tr>
<td>TEXAS</td>
<td>1981</td>
<td>65 +</td>
<td>Mandatory</td>
<td>Dept. of Hum. Res.</td>
<td>Immed. verbal</td>
<td>Fine</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>UTAH</td>
<td>1977</td>
<td>18 + (amended to include &quot;infirmities of aging&quot;)</td>
<td>Mandatory</td>
<td>Dept. of Soc. Serv.</td>
<td>Immed.</td>
<td>Fine</td>
<td>Yes, civil if good faith</td>
</tr>
<tr>
<td>VERMONT</td>
<td>1979</td>
<td>60 +</td>
<td>Mandatory</td>
<td>Dept. of Hum. Serv.</td>
<td>Oral, ASAP, written within 1 week</td>
<td>Fine</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>VIRGINIA</td>
<td>1977</td>
<td>18 + (and qualifying person 60 +)</td>
<td>Mandatory</td>
<td>Local Boards of Public Welfare</td>
<td>Immed. verbal, written within 12 hours</td>
<td>Fine</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>WASHINGTON</td>
<td>1984</td>
<td>60 +</td>
<td>Mandatory</td>
<td>Dept. of Soc. &amp; Health Serv.</td>
<td>Immed. verbal, written ASAP</td>
<td>Fine</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>WEST VIRGINIA</td>
<td>1981</td>
<td>Not provided</td>
<td>Mandatory</td>
<td>Dept. of Hum. Serv.</td>
<td>Immed.</td>
<td>Fine</td>
<td>Yes, civil or criminal if good faith</td>
</tr>
<tr>
<td>WYOMING</td>
<td>1979</td>
<td>60 +</td>
<td>Voluntary</td>
<td>County boards</td>
<td>Not provided/ fine</td>
<td>Fine</td>
<td>Yes, if good faith</td>
</tr>
<tr>
<td>WYOMING</td>
<td>1985</td>
<td>16 + (incl. &quot;infirmities of advanced age&quot;)</td>
<td>Mandatory</td>
<td>Dept. of Health and Soc. Serv.</td>
<td>Not provided/ fine</td>
<td>Fine</td>
<td>Yes, if good faith</td>
</tr>
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</table>
## ELDER ABUSE

<table>
<thead>
<tr>
<th>Cos. 8</th>
<th>Cos. 9</th>
<th>Cos. 10</th>
<th>Cos. 11</th>
<th>Cos. 12</th>
<th>Cos. 13</th>
<th>Cos. 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abrogation of Privileges</td>
<td>Confidentiality of Records</td>
<td>Protective Services</td>
<td>Consent Required</td>
<td>Emergency Services</td>
<td>Central Registry</td>
<td>Payment of Services</td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, for services unless court ordered or &quot;requested by a person, guardian or friend.&quot;</td>
<td>Yes</td>
<td>Not provided</td>
<td>By Dept. unless reimbursement</td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Not provided</td>
<td>Reimbursement procedures for court ordered cases</td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, for services unless court ordered</td>
<td>Yes</td>
<td>Not provided</td>
<td>Reimbursement procedures</td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Not provided</td>
<td>By agency, unless individual is able</td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Not provided</td>
<td></td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, for services unless court ordered or &quot;requested by a person, guardian or friend.&quot;</td>
<td>Yes</td>
<td>Not provided</td>
<td>Adult to pay if able, otherwise done by Dept.</td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Not provided</td>
<td></td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, for services</td>
<td>Yes</td>
<td>Not provided</td>
<td>By division, unless other agency or individual</td>
</tr>
<tr>
<td>Yes, except attorney</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, for services</td>
<td>Yes</td>
<td>Not provided</td>
<td></td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Not provided</td>
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</tr>
<tr>
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<td>Yes</td>
<td>Yes</td>
<td>Yes, for services</td>
<td>Yes</td>
<td>Not provided</td>
<td></td>
</tr>
<tr>
<td>Not provided</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, by court order</td>
<td>Yes</td>
<td>Not provided</td>
<td></td>
</tr>
</tbody>
</table>

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### Notes:
- **Confidentiality of Records**
- **Payment of Services**
- **Consent Required**
- **Emergency Services**
- **Central Registry**
- **Abrogation of Privileges**

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**Consent Required**
- Yes
- Yes, for services unless court ordered
- Yes, for services unless court ordered or "requested by a person, guardian or friend."

**Emergency Services**
- Yes
- Yes, by court order, with due process protections
- Yes, by court order

**Central Registry**
- Yes
- Yes, for services
- Yes, by court order

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**Payment of Services**
- By Dept. unless reimbursement
- By division, unless other agency or individual
- By agency, unless individual is able

---

**Consent Required**
- Yes
- Yes, for services
- Yes, for services unless court ordered

**Emergency Services**
- Yes
- Yes, by court order, with due process protections
- Yes, by court order

**Central Registry**
- Yes
- Yes, for services
- Yes, by court order

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**Payment of Services**
- By Dept. unless reimbursement
- By division, unless other agency or individual
- By agency, unless individual is able