

9-30-1998

# The Minnesota Vulnerable Adult Act Policy Analysis of 1995 Reforms

Therese L. Buckley  
*Augsburg College*

Follow this and additional works at: <https://idun.augsburg.edu/etd>



Part of the [Social Work Commons](#)

---

## Recommended Citation

Buckley, Therese L., "The Minnesota Vulnerable Adult Act Policy Analysis of 1995 Reforms" (1998). *Theses and Graduate Projects*. 91.  
<https://idun.augsburg.edu/etd/91>

This Open Access Thesis is brought to you for free and open access by Idun. It has been accepted for inclusion in Theses and Graduate Projects by an authorized administrator of Idun. For more information, please contact [bloomber@augburg.edu](mailto:bloomber@augburg.edu).

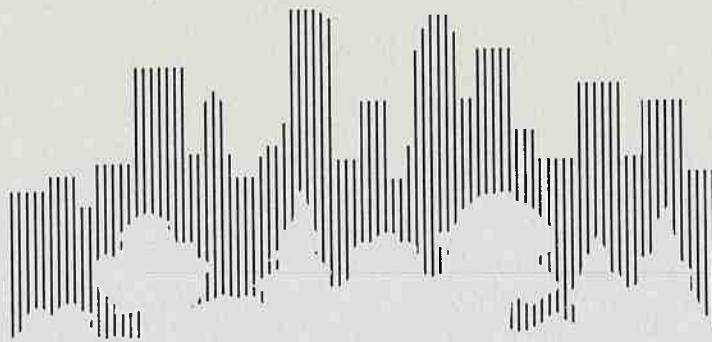
---

---

**AUGSBURG**

---

---



---

---

**C • O • L • L • E • G • E**

**MASTERS IN SOCIAL WORK  
THESIS**

**Therese L. Buckley**

**The Minnesota Vulnerable Adult Act Policy  
Analysis of 1995 Reforms**

**MSW  
Thesis**

Thesis  
Buckle

**1998**

## **ABSTRACT OF THESIS**

### **THE MINNESOTA VULNERABLE ADULT ACT**

#### **POLICY ANALYSIS OF 1995 REFORMS**

**THERESE L. BUCKLEY**

**SEPTEMBER 30, 1997**

Maltreatment of vulnerable adults is increasing at an alarming rate in the decade since the Minnesota Vulnerable Adult Act was passed in 1980. National estimates of elder maltreatment have risen by 50% in the last decade. Educated estimates of maltreatment are as high as 1.5 million incidents in the United States per year. The Minnesota legislature mandated in 1994 that the Minnesota Departments of Health and Human Services convene an advisory committee to make recommendations to the legislature on the means of preventing maltreatment of vulnerable adults. This thesis looks at the policy implications of the 1995 Minnesota Vulnerable Adult Reforms. The immediate impacts of this public policy initiative will have more to do with the administration of the new reporting procedure than adding additional funding in the area of prevention and support services for the people experiencing the abuse, neglect or financial exploitation. Some of the changes that will need to be included in future legislation are more funding and research into cross disciplinary training of adult protection workers and social service professionals in the field of family and domestic violence that includes older adults.

**THE MINNESOTA VULNERABLE ADULT LAW  
POLICY ANALYSIS OF THE 1995 REFORMS**

**THERESE L. BUCKLEY**

**Submitted in partial fulfillment of  
the requirement for the degree of  
Master of Social Work**

**AUGSBURG COLLEGE  
MINNEAPOLIS, MINNESOTA  
1998**

**MASTER OF SOCIAL WORK  
AUGSBURG COLLEGE  
MINNEAPOLIS, MINNESOTA**

**CERTIFICATE OF APPROVAL**

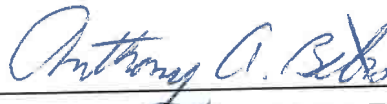
**This is to certify that the Master's Thesis of:**

**Therese L. Buckley**

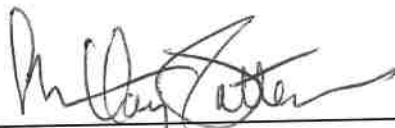
**has been approved by the Examining Committee for the thesis requirement for the Master of Social Work Degree.**

**Date of Oral Presentation : September 30, 1997**

**Thesis Committee:**



**Thesis Advisor Anthony Bibus Ph.D**



**Thesis Reader Sharon Patten Ph.D**



**Thesis Reader Iris Freeman MSW**

## **ACKNOWLEDGMENTS**

**Thanks to Dr. Anthony Bibus, my thesis advisor who provided the support, encouragement and patience I needed to complete my thesis. I have appreciated your guidance throughout this process.**

**Thanks to Dr. Sharon Patten, for taking the time to be a reader and offering valuable feedback, suggestions and support.**

**Thanks to Iris Freeman for taking the time to be a reader, a mentor, offering me much needed support and encouragement throughout the entire project.**

**A special heartfelt thanks and appreciation goes to my husband Jack, son Chris, and daughter Emily and my mom for their love and support and for putting up with me over the last four years of study.**

**Thanks also to my colleagues and friends at work who listened and supported me; I couldn't have done it without your help.**

**Thanks to my close and dear friend Louise for your editing help and motivation to complete my thesis; your enthusiasm and patience were such a help.**

## **ABSTRACT OF THESIS**

### **THE MINNESOTA VULNERABLE ADULT ACT**

#### **POLICY ANALYSIS OF 1995 REFORMS**

**THERESE L. BUCKLEY**

**SEPTEMBER 30,1997**

Maltreatment of vulnerable adults is increasing at an alarming rate in the decade since the Minnesota Vulnerable Adult Act was passed in 1980. National estimates of elder maltreatment have risen by 50% in the last decade. Educated estimates of maltreatment are as high as 1.5 million incidents in the United States per year. The Minnesota legislature mandated in 1994 that the Minnesota Departments of Health and Human Services convene an advisory committee to make recommendations to the legislature on the means of preventing maltreatment of vulnerable adults. This thesis looks at the policy implications of the 1995 Minnesota Vulnerable Adult Reforms. The immediate impacts of this public policy initiative will have more to do with the administration of the new reporting procedure than adding additional funding in the area of prevention and support services for the people experiencing the abuse, neglect or financial exploitation. Some of the changes that will need to be included in future legislation are more funding and research into cross disciplinary training of adult protection workers and social service professionals in the field of family and domestic violence that includes older adults.

# TABLE OF CONTENTS

Chapter I: Introduction .....	7
Description of the Problem .....	9
Current Federal Situation .....	11
Overview of Minnesota's Law .....	13
Current Minnesota Situation.....	15
Significance for Practice.....	17
Research Question .....	20
Chapter II: Literature Review .....	21
Literature Review Summary.....	22
Historical Analysis .....	24
Research Studies.....	27
Critical Analysis.....	33
Policy Analysis .....	34
Chapter III: Methodology.....	40
Information Gathering Process .....	40
Conceptual Framework.....	42
Research Questions .....	43
Policy Analysis of Chambers.....	43
Historical Analysis.....	44
Definitions .....	45
Chapter IV: Application of Framework .....	46
Minnesota Response .....	46
The Vulnerable Adult Act Reform Package .....	46
Research Questions .....	50
Strengths and Limitations of Framework.....	55
Strengths.....	55
Limitations.....	56



Chapter V: Discussion and Implications .....	58
Implications for Social Work Practice.....	58
Ethical Issues .....	60
Future Policy Research.....	61
Effective Service Models.....	62
Conclusions and Impacts of Vulnerable Adult Reforms of 1995 .....	64
References .....	66
Appendices	

## CHAPTER ONE

### INTRODUCTION

This policy analysis will examine the 1980 Minnesota Vulnerable Adult Act and the 1995 reform of the law. Using the historical framework of Richard Spano (1993), I will examine the intended impact of the reform of the law as well as the role of the social worker in advocating for vulnerable adults. This first chapter will lay out a summary of the major points of the Vulnerable Adult Law, its purpose, intended impacts of the law, and implications for future research.

The social problem of adult maltreatment is a complex problem that has only been identified in the last twenty years. With the increase in age of the U.S. population the incidence of adult maltreatment may rise. It is estimated that by the year 2020, one in five Americans will be over 65. According to data from a 1990 survey by the U. S. House Select Committee on Aging, elder maltreatment rose a dramatic 50% in the 1980s, from 1 million victims in 1980 to 1.5 million in 1990. The National Center on Elder Abuse conducted a national survey in 1994 and estimated that there were approximately 1.86 million elder abuse victims during that year. This included self-neglecting elders. The true national prevalence or incidence of elder abuse is not known today (National Center on Elder Abuse , Tataro,1995 ).

In response to the increase in maltreatment since the late 1970s, 43 states have adopted mandatory reporting provisions as part of their adult protective service laws. Minnesota enacted the Reporting of Maltreatment of Vulnerable Adults in 1980 ( Minnesota Statute 626.557 ). Despite all the reporting data, the prevalence of maltreatment is still based on estimates.

The U.S. Subcommittee on Health and Long-Term Care learned in its deliberations that while one out of three child abuse cases is reported, only one out of every eight cases of elder abuse is reported. Some experts estimate that only 1 out of 14 domestic elder abuse incidents gets reported to adult protective services (National Center on Elder Abuse, 1997). In Minnesota that rate is one in five cases which go undetected or unreported. In Minnesota, since 1986, there have been over 1900 cases of elder abuse reported each year to county Adult Protection units around the state (Minnesota Board on Aging,1994). That means that in Minnesota alone there are potentially 9,500 incidents of maltreatment every year. These numbers are based on actual reported cases of elder abuse and on educated estimates by experts in the field. The scope of this problem is going to grow over time with the increase in the 85+ population from 69,135 in 1990 to 112,500 in 2010, an increase of some 63%.  
( Minnesota Board on Aging, 1994)

## **Description of the Problem**

As noted above, the problem of maltreatment of vulnerable adults has grown in the last decade and by educated estimates will continue to rise. The problem facing advocates and lawmakers is how to develop a comprehensive public policy that will not only protect vulnerable individuals from maltreatment but also safeguard the individuals' right to privacy and rights to refuse care. In 1980 Minnesota decided as a state to enact the Vulnerable Adult Act. The intent of the legislation was to provide protection under the law from abuse, financial fraud, and neglect for vulnerable adults. The outcome of the law also generated data on the prevalence of the problem in Minnesota. The complex nature of the problem of adult maltreatment makes it all the more challenging to write comprehensive public policy. Lawmakers need to look at it from a variety of perspectives:

- 1) The person being abused or not receiving the care or attention they need. They may feel trapped in a situation they feel helpless to change. The maltreatment may have been going on over a long period of time and they may not recognize the maltreatment as wrong.
- 2) Professionals who deal with the problems on a daily basis, eg: adult protection workers, nurses, social workers, police officers, physicians. These professionals are mandated to report maltreatment and may have different definitions of what constitutes abuse and neglect.

**3) Family members caring for an older relative at home or in an institution. Families may have different standards and values for care of a family member.**

**4) Advocates and lawmakers trying to make the system work for vulnerable adults with stronger protective measures and accountability. With the limited resources that are available for social services in state budgets, lawmakers must look at the areas that will impact the most people.**

The victim of elder abuse wants the abuse to end and wants to receive appropriate services in a timely manner. The professionals who deal with the problems on a daily basis need to be given the resources, such as time, money, and support staff to assist the victims. Family members' needs may vary from needing support and education groups to concrete services in the home to care for the elder. Advocates and lawmakers need to understand and address the problem from the perspective of all those affected, and then provide appropriate resources, such as services, laws, and penalties for those who violate the laws.

## Current Federal Situation

Although this thesis focuses on Minnesota's public policies, we must also look national legislation to have a complete picture of the state policy. This section will present the national context of the problem of maltreatment of vulnerable adults.

In 1974 the Select Committee on Aging was created by the U.S. House of Representatives. The previous decade had focused congressional attention on the protection of children; then during the seventies, congress applied some of the same principles to the protection of the elderly. It has been presumed that, if the state has an interest in protecting its vulnerable children based on its *Parens Patriae* role, it has the same responsibility towards the vulnerable elderly (Coleman and Karp 1989). The 1970s was also a time of increasing awareness of older americans and some of the problems they face. It also was a time for reform in providing services for the elderly. Since this time, many reports have been written and much testimony has been given regarding the protection of vulnerable adults. However, no decisive federal action has been taken.

The federal government has drafted legislation to address these issues on a national basis such as the "Prevention, Identification, and Treatment of Elder Abuse Act of 1981." The report from the Special Committee on Aging states : **"Important Federal legislation in the elder abuse arena has received insufficient funding, weakening its**

impact. Examples include: The OAA's long-term care ombudsman program, which has received inadequate funding to pursue its statutory mandate to investigate abuse in board and care facilities; and

The OAA's elder abuse prevention provisions were only recently funded (FY 1991) at \$2.9 million, although the authorization for funding of State-level prevention activity was granted in 1987. Once the current funding is divided between the 670 area agencies on aging, the awards will be too small to support significant prevention activities." (Special Committee on Aging, United States Senate, 1992 (p. 2)

There are those who would argue that there should be limited federal involvement because they prefer local control of the issue, giving more jurisdiction to the state and county governments. However, others say we need a federal law that sets up a national clearing house to disseminate and collect information on adult maltreatment that is facing our society. Without federal standards, laws protecting vulnerable adults vary from state to state. Definitions of abuse and neglect, rights and responsibilities of individuals and organizations, data collection, and enforcement of laws are inconsistent. Prior to 1980, only 16 States mandated the reporting of elder abuse. Presently, 42 States and the District of Columbia have mandatory reporting laws.

(Special Committee on Aging, United States Senate, 1992)

## **Overview of Minnesota's Vulnerable Adult Law**

The Minnesota statute 626.557 clearly states the "public policy of this state is to protect adults who because of physical or mental disability or dependency on institutional services, are particularly vulnerable to abuse or neglect." The Vulnerable Adult Law recognizes society's obligation to protect and provide safe living environments to its most vulnerable citizens. The law was enacted in Minnesota in 1980. The full name of the statute is Reporting of Maltreatment of Vulnerable Adults. One of the primary strategies for protection is identifying maltreatment through reports by professionals. The statute lays out the public policy and definitions of a vulnerable adult.

"The Act was established to protect vulnerable adults from abuse and neglect, and to provide a means of reporting such acts to proper investigative authorities. The essential provisions of the law are:

- 1) Reporting known or suspected abuse or neglect
- 2) Investigating reports
- 3) Providing services to prevent abuse or neglect

(Minnesota Board on Aging 1989)

**ABUSE MEANS** : Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress.

**NEGLECT MEANS** : The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision.



(See Appendix A for full text of definitions)

( Minnesota Statute 626.557)

A "vulnerable adult," according to Minnesota statute, means any person 18 years of age or older:

1. who is a resident or inpatient of a facility;
2. who receives services at or from a facility required to be licensed to serve adults pursuant to sections 245A.01 to 245A.16, except a person receiving outpatient services for treatment of chemical dependency or mental illness;
3. who receives services from a home care provider licensed under section 144A.46;
4. who, regardless of residence or type of service received, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status."

(Minnesota Statute 626.557. Reporting of maltreatment of vulnerable adults)

Minnesota's law requires professionals such as nurses and social workers to report cases of suspected maltreatment to their county human services agency. These professionals are known as "mandated reporters." The human services agency then must investigate the report. If a crime has been committed against a vulnerable adult, the county attorney must investigate and prosecute when warranted. (Minnesota Board on Aging, 1989).

The law also encourages concerned citizens to report suspected abuse or neglect to their county human services agency; the reporter's identity is kept confidential, and he or she cannot be sued by anyone for making a report in good faith (Minnesota Board on Aging, 1989).

The 1980 law was the state's first formal attempt at providing protection for vulnerable adults in Minnesota. It was intended to be a comprehensive effort to protect vulnerable adults from abuse, financial fraud and neglect. Even though the law was intended to be comprehensive, since 1980 the law has been amended every year with the exception of three years. The amendments more specifically describe the "vulnerable adult", the rights of the reporters and the responsibilities of the agencies, and they also address data privacy practice and reporting.

### **Current Situation in Minnesota**

Since the time the Vulnerable Adult Act was enacted there have been minor amendments to the law but no major revisions of the law, until the 1995 legislative session. In 1993, the Attorney General's Office and Care Providers of Minnesota, an association that represents nursing homes which care for vulnerable adults, agreed to work together on a comprehensive reform of the current law. The current system of reporting had become too complex and confusing. Mandated reporters would file reports but could not find out the status of the reports filed. The workers trying to provide protection and services to

vulnerable adults were bogged down with a reporting system too concerned about receiving reports than providing needed cares and services.

These two groups, along with many key stakeholders in the system which included family members of nursing home residents, advocates of nursing home residents, adult protection supervisors, attorneys, nurses, formed the Working Group. At the same time, the Association for Residential Resources in Minnesota proposed legislation which became law and mandated the Minnesota Departments of Health and Human Services to convene an advisory committee. The Working Group and the advisory committee worked together to make recommendations on the means of preventing maltreatment of vulnerable adults and for the provision of protective services to vulnerable adults (Minnesota Attorney General's Office, 1994).

The Working Group continued to meet throughout the 1994-95 legislative session. They drafted and sent a survey to five different groups: facilities, prosecutors, regulating agencies, consumer advocacy groups and law enforcement agencies. Key themes and recommendations included:

- 1) streamline the system to improve coordination among the responding agencies;
- 2) facilitate faster response to reports by clarifying terms in the law, increasing staffing and possibly using multi-disciplinary teams;

3) provide training and education for all disciplines involved with the system.

The Working Group drafted thirteen broad reforms (see Chapter 4) and recommended that the Legislature mandate that they continue its work into the 1995 legislative session. During the session the reform proposal was examined by various Senate and House committees. Specific amendments, involving major change, were made to the Vulnerable Adult Law, which was passed on May 22, 1995 (Senate File 512, House File 598). (See Appendix B)

### **Significance for Practice**

Social work practitioners, in compliance with professional ethics and state laws, play a central role in the reporting of maltreatment of vulnerable adults. Social workers are most often the adult protection workers making assessments and determining if more action needs to be taken if abuse or neglect has occurred. A central value of social work practice is client self-determination. In the context of vulnerable adult issues social workers must pay particular attention to the wishes of their clients, but also fulfill their obligation to report, as it is stated in the law.

As a social work practitioner whose primary clients are older adults, I work with the strengths of my clients to resolve the problems of abuse and neglect. Inherent in the relationship that I have with clients is the tension between client strengths

and my obligation under the law to report abuse and neglect. A case to illustrate this tension is as follows.

An 80 year old woman is living with her 50 year old unemployed son and his family. They have been in this arrangement for the past year. The son has a drinking problem and has exploited his mother financially, as she is the only steady income at this time. She does not have a checking or savings account of her own, so each month she hands over her check for the son to cash. The son takes some of the money for his mother's room and board expenses. She gets some cash for personal needs. She has some chronic health problems eg. high blood pressure, diabetes, and arthritis. She has a physician but has not been to the doctor in over a year. She is isolated and is often home alone all day. At the first visit we sit in the kitchen and talk over her situation. When the son arrives she is hesitant to say anything. She is reluctant to say her son is exploiting her. The client agrees to another visit when we can make some plans to get her to the doctor and out for some social activities during the day. As I got to know this woman, I find out that she has been a very active member of her faith community. She draws much inner strength from that experience.

The next visits we spend at a coffee shop discussing her options and if she wants to move out of this arrangement with her son. She feels it would be too hard to make a change at this time.

Under the law I am required to report this case of financial exploitation. The situation is not clear cut because the son sometimes provides adequately for his mother. Do I risk the positive relationship with this client by reporting to adult protection or continue to work with her strengths in the present situation. What is the most appropriate action to take with the son without jeopardizing my relationship with this client? Chapin (1995) in an article on social policy and the strengths perspective challenges social workers to bring the clients' perspective to policymakers.

"The strengths perspective, focuses on the power in people. Therefore, clients' stories of how they have coped with barriers to getting their needs met are key to effective policy design. Policymakers in agencies as well as at the legislative level must hear these stories. The responsibility of the social worker in the story-telling process is two-fold. Where they are the policy makers they must make sure that they listen to these voices. When others are making policy, the social worker's responsibility is to make sure clients' stories are heard and understood" (Chapin, 1995, p. 511).  
By utilizing the strengths rather than the problems and pathologies of clients, social work practitioners can help vulnerable people feel that they have more control and choices

in their situations and feel less like victims. However, the reporting strategy depends on outsiders noticing a problem and then dealing with a potentially adversarial intervention.

### **Research Question**

The focus of my thesis will be on the analysis of the intended reforms of the Minnesota Vulnerable Adult Act, their impact on the county social service system and the people that they serve. What are the intended and the potential unintended impacts on the professional care providers, the informal support system, and the vulnerable populations? Can the role of the social worker as an advocate for vulnerable populations be a deterrant for getting help? What are the likely policy impacts on preventive services for vulnerable adults? My thesis will also explore the ethical dilemmas that social work practitioners face when working with very vulnerable populations that are often involuntary clients.

The Literature Review focuses on the wide body of research in this area most specifically related to direct practice with clients. The area of research that was harder to find was the actual impact the public policies had on the clients and the direct service workers. The areas we know the most about are the incidence of adult abuse and the extent of the rise in this problem. The actual impacts that these laws have had on either reducing the incidence or of bringing more awareness of this problem are hard to quantify and research. The Literature Review will help shed some light on these problems, but it also will bring up new questions for further research.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

The literature search that I conducted used a number of different resource materials. They included :

- 1) The computer data base of the Social Work Abstracts (1977-94)
- 2) General Periodicals Index at the Minneapolis Public Library
- 3) Abstracts in Social Gerontology
- 4) University of Minnesota , LUMINA, data base at Wilson Library
- 5) University of Minnesota, Government Publications Library at Wilson Library
- 6) References at the end of journal articles.
- 7) National Center on Elder Abuse (NCEA)

The key words used in the search are: Elder Abuse, Vulnerable Adult, Adult Protection, Legislation on Elder Abuse, Guardianship, Capacity, Ombudsman, Public Law, Protective Services, Advocacy, Mandated Reporting, Consumer, Civil Legal Rights.



The criteria used to select a research article were :

1) The study was concerned with the general prevalence of Elder Abuse.

2) The articles were from the 1980s and 1990s.

Articles written before this were not as useful in that laws were just being enacted and not much research had been done before the 1980s.

3) The article discussed the specific laws or statutes related to the law.

### **Literature Review Summary**

The literature written in the area of vulnerable adults tended to focus on the actual abuse and neglect experienced by individuals, not on the impact of the laws written to protect against or prevent abuse.

The literature review pointed out that there is wide variation in the definition and enforcement procedures for reporting abuse of the elderly. Along with the inconsistencies in the laws, is the variation in the definitions of **abuse, neglect** and **maltreatment**. The articles pointed out that the problem is under-reported and misunderstood. The research in this area is relatively new and many of the laws have only been enacted in the last 10 to 15 years. The research I found in the area of preventive services for vulnerable adults was limited to a few articles. Although more articles on new programs are being featured in the National Center on Elder Abuse newsletter EXCHANGE.

The public policy questions that will guide the Literature Review are from Spanos' (1993) work on the historical context of social problems. Spano (1993) feels the practical policy analyst needs to know how current conceptions of a social problem and current actors connect with prior conceptions and actors in a policy area.

The literature review will be organized in four areas: Historical Analysis, Research Studies, Critical Analysis, and Policy Analysis.

- Why is this concern being raised as a problem at this moment in history?
- Is this a " new " problem?
- What are the precedents for the the ideas and values ( ideology ) being used to define the problem? ( **Historical Analysis** )
- Who are the actors now defining this issue as a social problem and how are they different from past actors? ( **Critical Analysis** )
- What conditions now exist that suggest different outcomes or make society more receptive to change ? ( **Policy Analysis** )

(Spano 1993)

## Historical Analysis

Since the 1970s elder abuse has been recognized as a social problem of significant importance. Prior to the 1970s senior advocates were bringing the concerns of the elderly to the public. The civil rights movement and the peace movement had brought the issue of discrimination and oppression to the public view and laid the foundation for the reforms in the 1970s in providing services for the elderly.

Block and Sinnott (1979) did early research in the area of elder abuse. They termed it “the battered elder syndrome “ and laid the ground work for study in the area of the incidence of maltreatment of older persons. Their random sample survey of older adults living in the Baltimore - Washington area had a low response rate and a sample so small that the findings were not generalizable. Still the exploratory study was significant in that it validated a social problem that needed further study and recognition from policy makers. Block and Sinnott made recommendations for proposed legislation that would require mandatory reporting of elder abuse. Block and Sinnott also recommended that just as the 1974 Child Abuse Prevention and Treatment Act established the National Center on Child Abuse and Neglect, a national center on elder abuse would be an important step in helping prevent elder abuse. At approximately the same time (1973) North Carolina became the first state to establish an APS law (Tatara, 1995). In 1974, three other states (Florida, South Carolina, and Virginia ) enacted their APS laws (Tatara,1995).

Tatara also pointed out that before 1974 no elder abuse-specific laws or institutional elder abuse laws were in existence. The House Select Committee on Aging was created in 1974 also to look at the problem of maltreatment of vulnerable adults on a national level. Coleman and Karp (1989) point out that adult protective services have changed radically over the last several years. In the past state and local governments sought to protect children; then at the end of the 1970s, protection of the elderly became more prominent as early research emerged on this subject (Coleman and Karp 1989, Giordano and Giordano 1984). Just as the state had an interest in protecting vulnerable children based on its *Parens Patriae* role, protecting and having responsibility to vulnerable elderly also emerged (Coleman and Karp 1989). Many of the Adult Protective Services laws have in general been modeled after child protective services legislation. There is an underlying assumption that vulnerable adults lack the ability to make decisions about their own care and lifestyle (Special Committee on Aging, United States Senate, 1992).

The 1970s also was a time of reform and greater awareness of the needs of vulnerable elderly in the community. Legislation such as the Older Americans Act and Title XX Social Services Block Grant programs provided more funding to provide services in the community for older people (Coleman and Karp 1989). During this time state elder abuse legislation was focused on providing protection as well as

services for those disabled, old and questionably competent (Coleman & Karp, 1989).

In Minnesota groups such as Nursing Home Residents Advocates (1972), Senior Workers Associations of St. Paul (1976) and Minneapolis (1973) were being established by advocates for older persons. Many of these groups were founded by like-minded social workers, trying to advocate for better treatment of the elderly. The increased involvement of these groups brought about much needed legislative and public policy reforms. Professional recognition of social work practice with older people was starting to put social workers in areas of practice such as adult protective services, community case work and family work. Workers also were serving on task forces, testifying at legislative hearings to recognize the social problem of elder abuse. The actors now defining the issue were the direct service providers working with older adults on a daily basis, not the legislators or special interest groups. The push for needed changes and protections was coming from an emerging grass roots organizations working with older adults. Because of the work of these groups society in general is more aware and receptive to needed changes in the area of maltreatment of adults.

## Research Studies

The largest study to establish the prevalence of elder abuse in the general population was by Pillemer and Finkelhor (1988). The study was based on a random stratified sample of all community dwelling elderly persons in the Boston area. The three areas of abuse they looked at were: physical, psychological and neglect. The authors did not look at financial abuse or self-neglect. The survey found an overall prevalence rate of 32 elderly abused per 1000. The authors found that substantial underreporting of elder abuse exists. Another finding of substantial importance is that the largest proportion of elder abuse is in fact spouse abuse (Pillemer & Finkelhor 1988). The authors acknowledge the limitations of this study, particularly the omission of financial abuse. The authors conclude that elder abuse can be the subject of general population surveys. Much more information about domestic violence and elders needs to be studied along with service innovations in this area.

Podnieks' (1992) similar study of Canadian elders, sought to establish the prevalence and circumstances of abuse of the elderly in Canada. The survey established the prevalence rate of 40 persons per 1,000 elderly that had recently experienced some serious form of maltreatment in their own home, at the hands of a partner, relative or significant others (Podnieks 1992). The study added the category of financial exploitation, and came up with similar findings of Pillemer and Finkelhor, that prevalence rates are understated.

Podnieks (1992) offered some recommendations for future research and public policy; they include, education and training about elder abuse, awareness of risk factors and support services for seniors. Podnieks (1992) study concludes that public discussion on the issue of elder abuse is needed along with research of elder abuse in institutional settings.

Pillemer and Finkelhor (1989) also looked at the specific causes of elder abuse. They looked at the most widely held risk factor in the elder maltreatment literature, caregiver stress. It is a widely held belief by researchers that resentment created by the dependence of an older person or a caretaker, builds up and maltreatment by the family member takes place. Pillemer's (1989) results support this argument even more strongly. Pillemer and Finkelhor (1989) had preliminary evidence from their Boston study, that supports the reverse of the caregiver stress hypothesis; that is the risk factor is not on the dependence of the victim but of the abuser. Pillemer (1989) found the abusers to be heavily dependent individuals. The abusers included spouses and children who were disabled, cognitively-impaired or mentally ill. Pillemer's (1989) study also points toward interventions into elder abuse that differ from current efforts. Elder abuse treatment programs generally emphasize the provision of in-home services and caregiver support groups, with the goal of reducing caregiver stress. Pillemer(1989) points out that victims would benefit from services similar to those offered to younger battered women. Emergency housing and support groups to discuss

common problems as well as victim advocacy services would be more helpful to elder abuse victims. Brandl & Raymond (1996) point out women age 50 years or older, or who have a physical or cognitive disability, or are being abused by an adult child, are the forgotten victims of domestic abuse. Brandl and Raymond (1996) point out that the majority of elder abuse, excluding self-neglect, is attributable to family violence. In Wisconsin, the victim is related to the abuser in almost 80% of reported elder abuse cases, excluding self-neglect. Brandl and Raymond also point out that caregiver stress frequently is confused with domestic violence in later life. But unlike domestic abuse, caregiver stress does NOT originate from a belief system which makes it acceptable for one person to exert power and control over another.

In both prevalence studies, in the United States and Canada the category of abuse that was not analyzed was self-neglect. Tatara (1993) in his analysis of state adult protective services estimates that the reporting rate for self-neglecting elders is about the same as the rate for other types of domestic elder abuse victims, the total number of self-neglecting elders for 1991 would be 842,000. Duke (1991) in the national study on self-neglect provided the most comprehensive look at this area of adult protective services. The study pointed out there is a lack of consensus on a number of issues. These unresolved issues include:



- how self-neglect is defined
- how at-risk populations are identified;
- whether self-neglect is a category of elder abuse or an entirely different phenomena;
- when involuntary intervention is appropriate;
- how to fulfill the responsibility of a compassionate society to protect vulnerable citizens; and
- how to provide essential services in the least intrusive way.

Duke (1991)

The definition that the National Association of Adult Protective Services Administrators, NAAPSA, adopted in 1990 is as follows:

Self-neglect is the result of an adult's inability, due to physical and/or mental impairments or diminished capacity, to perform essential self-care tasks including: providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; and/or managing financial affairs.

Duke (1991)

Hudson's(1989) analysis of the concepts of abuse and neglect brings up the same issue of precise definitions needed to establish standards to collect research data to further study in the area of elder mistreatment. Hudson (1989) feels with clearer definitions, communication will improve, theory development will progress and research findings will be

more comparable. Practitioners will then have more consistent guidelines for making judgements regarding the identification of elder abuse and neglect ( Hudson, 1989 p. 7).

Moon and Williams (1993) in their study of African-American, Causcasian American, and Korean American elderly women also are concerned about lack of uniformity when defining and identifying elder abuse or maltreatment. These cases may end up with adult protection service with inappropriate interventions and outcomes that are unresponsive to aged clients. Their research sample consisted of 30 African- American,30 Korean- American, and 30 Causasion American elderly women living in Minneapolis, Minnesota. A structured questionnaire and face-to-face interviews were given. Thirteen scenarios were used to measure and compare the perceptions of elder abuse and help-seeking behaviors of these three groups of elderly women. The research was not generalizable because of the study's small sample. The study raised a number of questions about involving older people in the process of formulating research by validating their own insights, perceptions, and experiences as to what constitutes abuse (Moon & Williams 1993). The other area that is in need of more attention is research that involves elder abuse and cultural diversity. How does culture influence the definitions of elder abuse and resultant interventions? According to data collected on elder abuse there is little documentation in minority communities of its prevalence and causes.

“It has been argued that adult protective services are not consistently structured to identify and respond to victims who are racially and culturally different and who do not speak english.” ( Special Committee on Aging, United States Senate 1992 , p. 49).

Research in the area of minority elders and elder abuse and cultural diversity has been very limited( Moon and Williams, 1993). The questions raised in their qualitative study need to be studied by practitioners and policymakers alike.

“1) To what extent are the elderly’s perception of elder abuse and their help-seeking behavior consistent with the practitioner’s judgment of abuse and appropriate help-seeking behavior?

2) What are the similarities and differences among diverse populations in their perceptions of the problem and appropriate approaches to deal with the problem?” ( Moon and Williams 1993, p. 393).

“ The role that cultural diversity plays in the definition, assessment, and intervention in elderly maltreatment has been given little attention. Also apparant is a limited understanding of what occurs among diverse culural groups and which approaches are inclusive of them.” ( Griffin and Williams 1996, p.2).

Public policy discussions need to include minority communities in the dialogue and implementation of elder abuse legislation.

## Critical Analysis

Faulkner (1982) raises a number of questions concerning mandatory reporting requirements. Faulkner (1982) disagrees with the proliferation in the 1980s of mandatory reporting laws of states trying to cope with and solve this newly “discovered” form of family violence, called elder abuse. He argues that questions must be addressed when adopting these laws: “What is the role to be played by the state in ‘protecting’ competent adults?” (Faulkner 1982, p.71). Faulkner (1982) points out that mandatory reporting is primarily a case finding tool, as opposed to case prevention. The model that might better address this problem is advocacy and supportive voluntary services to strengthen the victim and the family (Faulkner, 1982, Regan 1981).

Faulkner (1982) concludes that until society is willing to back up mandatory reporting laws with adequate supportive and advocacy services, reporting laws only take our attention away from the real problems families are facing. Callahan (1988) states:

“A typical response to a problem like elder abuse is to pass a law. There is implied faith in enacting legislation. What the legislature mandates is assumed to occur. This legalistic approach to the problem can be contrasted to a behavioral approach, in which it is assumed that saying so does not result in doing so. Passing a law will not solve elder abuse.”

(Callahan 1988, p. 457).

The problem is not finding the cases but rather doing something when they are found Callahan (1988). Regan(1981) feels that the new mandatory reporting laws and service provision through “Adult Protective Services” interfere with the autonomy of older people. He sees these public policies as promoting involuntary intervention in the lives of the elderly. Regan (1981) looks to legislative reforms to create more voluntary interventions thus reducing the need for involuntary intervention. Faulkner (1982) advocates strongly for using the model of domestic violence to combat elder abuse and neglect. He contends that families need advocacy and supportive services to strengthen individuals and families, not involuntary interventions ( Faulkner 1982).

There are many differing opinions and research in regard to elder abuse legislation and its affect on individuals and families. The critical analysis I highlighted in this section are from some of the most vocal critics of mandatory reporting legislation. The next section of the literature review will take a look at specific public policies that have responded to this research.

### **Policy Analysis**

The General Accounting Office’s report on Elder Abuse: Effectiveness of Reporting Laws and Other Factors (McDonald,1991) stated that as of November 1990, 42 states and the District of Columbia had adopted mandatory reporting laws for elder abuse. Only 8 states had made reporting

voluntary. Most experts consider reporting laws, whether mandatory or voluntary, much less effective than other factors in maximizing the number of elder abuse cases identified, prevented and treated (McDonald,1991). The report the Government Accounting Office produced was based on a telephone survey of 40 officials on aging and adult protective services agencies. A number of factors that are more effective than the reporting law itself are : A high level of public and professional awareness is considered the most effective factor for identifying elder abuse victims. In-home services for the elderly are the most effective factor for both prevention and treatment of elder abuse (McDonald,1991).

Policy makers have been debating the question of voluntary or mandatory reporting laws for some time. Supporters of mandatory reporting laws state that those laws heighten awareness of the problem of elder abuse among professionals required to report (Special Committee on Aging United States Senate,1992).

The arguments against mandatory reporting laws are considerable and include the following arguments :

- The laws are modeled after child abuse reporting law
- They may discourage older people from seeking report and thus break the client/ patient privilege
- When older people do seek help, there are inadequate services to connect them for further follow-up.

Fredriksen (1989) in her research on the effect of changes in adult protective services in Washington State found that referrals almost doubled since the implementation of mandatory reporting. With the increase of reports additional funds were not appropriated to deal with the new situation this legislation created. Fredriksen (1989) concludes that only through increased understanding of the practical application of such legislation can effective social policy be developed.

The research has focused mostly in the area on community dwelling elders. However, some of the studies looked at elders living in nursing homes and board and care facilities. A number of Federal programs and laws exist to protect institutionalized elders from abuse and neglect. One of the most effective advocacy programs funded by Older American Act grants is the long-term care ombudsman program. The program is unique in that its primary objective is for ombudsman to be the advocate for residents of long-term care facilities and a public information clearinghouse for anyone with questions about the long term care system. Ombudsman advocate for those residents that may not have any family to speak for them. The amount of people in long-term care facilities in Minnesota alone amounts to approximately 48,669 people ( Minnesota Department of Health, 1994).

Netting, Paton, and Huber (1992) discussed the complaint reporting system for the Long -Term Care Ombudsman program and found that state reports vary in what

the Ombudsman Program is required to report and in the extensiveness of this information. This program is a federally mandated program under the Older Americans Act. The collection of pertinent data on nursing and board and care homes will shed new light on important information on who is complaining and why, and is vital to developing long-term care policy on a national level( Netting, Paton, and Huber 1992). This advocacy program will help educate legislators and the public about elder abuse in long- term care facilities.

Another area of policy concern is the area of involuntary intervention by Adult Protection (APS) personnel. Almost every State's APS law provides a mechanism for involuntary intervention, when there is an objection by the vulnerable adult or the caregiver, or when the vulnerable adult is not capable of consenting(Special Committee on Aging,United States Senate 1992, p.12). The interventions may include appointment of a guardian or a conservator, provision of appropriate treatment , or removal of the elder from the care of an abusive or neglectful caregiver. (Special Committee on Aging, United States Senate1992). This area of the law is controversial in that we are intervening in someone's life and family support system.

Specialists from different fields must be involved eg: physicians, public health nurses, social workers, home health aides. Primary responsibility for coordinating service and advocating for the client usually rests with a social worker.



Involuntary interventions thus raise difficult ethical and practical concerns for social workers particularly.

“What happens to the right of self-determination when an adult protective services (APS) worker is confronted with an elderly client who is judgmentally or emotionally impaired? What is the proper balance between a client’s right to engage in self destructive behavior and a service provider’s obligation to prevent harm? How are the rights of the community and the rights of the individual to be balanced when forced services and intervention are considered?”

(Special Committee on Aging, United States Senate, 1992, p.18)

The past twenty years have seen an increase in concern for the social problem of elder abuse by policymakers, advocates and professionals. The large number of state laws (50) dealing with elder abuse, along with the elder abuse prevention programs established under the Older Americans Act, now establishes a basic legal foundation to protect vulnerable citizens from various types of maltreatment. Along with the enactment of the laws, training and research in this area is growing. New and innovative programs are being developed.

Questions still remain about what impact if any mandatory reporting laws have on the reduction in maltreatment of vulnerable populations.

The next chapter will lay out the policy framework I used in my research on Minnesota's response to the social problem of maltreatment of vulnerable adults.

## **CHAPTER THREE**

### **METHODOLOGY**

This research is a policy analysis using existing materials and key informants. In gathering information, I attended meetings of the Working Group that re-drafted the existing Vulnerable Adult Act during the 1994 and 1995 legislative sessions, and I also attended Crime Prevention Committee and Health Care Committee hearings during these sessions. I conducted individual interviews with key informants of the Working Group, which included Attorney General staff, Department of Human Services staff, consumer advocates, and a county administrator. The information shared by the key informants was used to generate themes and questions for further analysis. In addition, I studied the state law before the reform, the new drafts of the law and amendments and related federal and state reports. The qualitative information emerged from the data and information gathering process.

#### **Information Gathering Process**

The legislative process is a very dynamic one that takes place on a formal as well as an informal basis. I had first hand access to observe and gather data informally because of my internship at the Minnesota Alliance for Health Care Consumers. I was able to attend many of the steering committee meetings and observe and participate in the give and take with various stakeholders. As a student studying this

process members of the working group graciously met with me to discuss the issues of elder abuse and maltreatment. I met with an Assistant Attorney General to look at the original surveys sent out by the working group. A Hennepin County Adult Protection Program manager spent time talking to me about the needs of a large urban county in the area of abuse and neglect particularly self-neglect. I met with staff at the Department of Human Services who consult with counties about the vulnerable adult act. I attended Senate Crime Prevention Committee hearings, Senate Health Care Committee hearings and was at the hearing when the bill was being introduced. Some of the people at the hearings included: Senators and Representatives, consumers of long-term care services, domestic violence advocates, working group members, Care Providers of Minnesota, Minnesota Nurses Association, United Food & Commercial Workers Union, Minnesota Alliance for Health Care consumers, Minnesota Chiefs of Police, Minnesota State Sheriffs Association, Association of Residential Resources in Minnesota, Office of Ombudsman for Older Minnesotans, Minnesota Board on Aging, Minnesota Senior Federation, Minnesota Disability Law Center, Minnesota Association of County Social Service Administrators, American Association of Retired Persons and Office of the Ombudsman for Mental Health and Mental Retardation.

The notes and hand outs I gathered at all these meetings, I was able to organize into different headings eg. Working Group discussions, legislative hearings, key informant interviews. Some consistent themes kept coming up eg. simplify a very complex system, need for less paper work so workers could focus on the clients.

### **Conceptual Framework**

A historical analysis is essential in determining how the history of the social problem of adult maltreatment affects current policy and practice. History provides further understanding of the prior classification of the phenomenon and examines its current significance as a social problem (Spano, 1993). Spano (1993) claims that the current status of the problem can be understood by exploring the historical context of a problem.

Five key questions will guide the search for the historical context of a problem viewpoint:

- Why is this concern being raised as a problem at this moment in history?
- Is this a "new" problem?
- What are the precedents for the ideas and values (ideology) being used to define the problem?
- Who are the actors now defining this issue as a social problem and how are they different from past actors?

- What conditions now exist that suggest different outcomes or make society more receptive to change?

(Spano 1993,p.41,42).

## **Research Questions**

Using Spanos' historical framework as a basis for evaluating public policy, these research questions were formulated in the context of the Minnesota Vulnerable Adult Act.

- What were the intended reforms of the Vulnerable Adult Law?
- What are the likely impacts on the county social service systems?
- Is this a new problem?
- Can the role of the social worker in advocating for vulnerable populations as a "mandated reporter" sometimes be a deterrant for getting help?
- What are the ethical implications for practice?
- What are the likely policy impacts on preventive services for vulnerable adults?

## **Policy Analysis of Chambers**

Chambers argues that when analyzing a social policy, practitioners must bring to bear their own practice experience and that of others (Chambers, 1993, p. 74). The approach that Chambers calls "value-critical" requires practitioners to look at

their own value biases and frames of references about a social problem.

"This is in line with two ideas: (1) Policy as well as social problem analysis can emerge from practice, not always the other way around, and (2) theories are not ultimate truth and should and must be shaped by practice and empirical experience as well as abstractions" (Chambers, 1993 p. 76)  
The policy analysis framework will guide my research and analysis of the operating characteristics of the Vulnerable Adult Act.

### **Historical Analysis**

Historical analysis of a social problem such as Elder Abuse guides the analysis in such a way that the policy is looked at from the perspective of how the social problem was dealt with in the past. The framework of historical analysis forces you to look at social problems within the context of what has happened in the past to formulate a new viewpoint of the present history. Elder abuse has always occurred, but more recently policy makers are forced to deal with this problem because of the large increase of elders in our society and the prevalence of the problem.

The historical analysis in Chapter 2 framed the context of how Minnesota policy makers have dealt with this policy issue in the past fifteen years.

## **Definitions**

The definitions section of the bill focuses on the key terms contained in the current bill. The Working Group found that the former definitions were inadequate and/or ambiguous, causing failure to identify and investigate reported cases of maltreatment and impose penalties in a timely and equitable manner (Minnesota Attorney General's Office, 1994).

The definitions include "abuse", "neglect", and a new specific definition for "financial exploitation". "Mandated reporter", "Vulnerable Adult", "accident", and "therapeutic conduct" are defined in more detail in the new proposal. New definitions for "common entry point", "lead administrative investigative agency", "maltreatment", "facility", "caregiver", "false", "final disposition", "report", "immediately" are also given. ( See Appendix A for specific definitions.)

This chapter attempted to lay out the policy framework for the analysis of the Vulnerable Adult Act. The legislative process is a complex one and has many constituents and interest groups, the next chapter will explain this process in more detail.



## **CHAPTER FOUR**

### **APPLICATION OF FRAMEWORK**

#### **Minnesota Response**

Since 1993 Minnesota has been engaged in a process to reform the Vulnerable Adult Act. That process was explained in my introduction to this thesis. The process included many stakeholders including consumers of adult protective services, in what has become a complex and confusing reporting system.

The group that was formed to work on improving this system was called the Working Group. This group met over a period of two years to identify the key issues that needed reform. The Working Group recommended thirteen broad reforms that were included in the Vulnerable Adults Act in 1995. The thirteen broad reforms are listed below.

#### **The Vulnerable Adult Act Reform Package**

1. **Definitions** - The terms, including the definitions, contained in the Vulnerable Adult Act, (VAA) must be defined more precisely.

2. **Investigation process** - The current investigative process should be redesigned to minimize duplication of effort, promote efficient use of investigative resources, and be responsive to the needs of all the stakeholders in the VAA system.

3. **Standards of evidence for investigations** - The Legislature should specify and standardize the level of evidence which must be satisfied before a regulating agency may make a determination that abuse or neglect under the VAA did or did not occur.

4. **Common form for mandated reporters** - A multi-disciplinary group should develop a single, uniform reporting form for all reports into the Vulnerable Adult Act system.

5. **Penalty scheme** - The sufficiency of the current penalty scheme to punish perpetrators of abuse or neglect must be evaluated.

6. **Clearinghouse/point of entry** - The Legislature should establish a defined point of entry for reports into the Vulnerable Adult Act system.

7. **Screening and assessment for imminent risk and referral** - A process which identifies those Vulnerable Adult Act reports requiring an immediate response must be developed.

8. **Education/outreach** - A training and education program for professionals and the general community on all aspects of the VAA reporting, response and penalty should be developed and promoted.

9. **Timing throughout the system** - The Legislature should establish guidelines within the VAA system with specific times for reporting by mandated reporters to the point of entry, and for response by the appropriate agency.

10. **Database** - A single computerized data base that is accessible by a variety of agencies and individuals, and which would allow the tracking of VAA reports should be developed.

11. **Reprisals/Protections/Bad faith reports-** The VAA system should provide improved protection for both reporters, and those against whom reports are made, from retaliation and false reporting of incidents intended to injure the reputation or employment of an individual or entity.

12. **Team concept** - The use of multi-disciplinary teams for response to VAA reports should be encouraged.

13. **Legal consistency** - There is a need to review, clarify, and, if necessary, amend definitions and provisions contained within the VAA and other areas of the law to create overall legal consistency.

The discussions that I was privileged to attend were spirited and brought out some of the problems that practitioners face now. For example in Hennepin County in 1991 alone 4,633 calls were received and 544 vulnerable adult cases were assigned to investigate. There were three main problems identified especially in an urban county protection system:

- There is duplication of responsibility.
- The Adult Protective Services, (APS) Rule and statute are disproportionately weighted toward services to persons who reside in licensed facilities. There is less emphasis on service mandates to vulnerable adults who reside in their own homes or with family members. The overwhelming need for county assistance is in the community where the increasing population of isolated frail elderly and deinstitutionalized younger adults continue to place high demands APS programs for service.
- The law is vague in its intent regarding self-neglect as a legitimate category of maltreatment. Self neglect should be included as a form of neglect and so specified in the definitions section of the statute.

The consensus process that Minnesota followed was positive in that it brought together people with different perspectives on the reporting system. The reform package recommendations do not serve one group's interests but are designed to improve the entire process. The bill SF 512 that was introduced by Senator Spear got support from a wide variety of groups . ( See Appendix C). The Legislative pathway that the bill had to go through was extensive before the final passage on May 22, 1995. (See Appendix D).

The big change in the Vulnerable Adult Act is how cases of maltreatment get reported. Calls are now taken at a Common Entry Point and then routed to the appropriate lead agency. The county adult protection agency is the typical common entry point, although in some rural counties it is the Sherrif's department that is the common entry point. (See Appendix E). By streamlining the process current duplication and confusion which results from reports being accepted by up to six different agencies will be eliminated.

## **Research Questions**

- **What were the intended reforms of the Vulnerable Adult Law ?**

The intended reform of the VAA were in four key areas:

- 1) Streamline the reporting process so that mandated and voluntary reporters only have one place to call to make a report. The reform of the VAA Law accomplishes this by setting up Common Entry Points.

- 2) Provide precise new definitions for key terms in the law such as abuse, neglect and financial exploitation.
- 3) Explicit consequences for perpetrators of abuse, neglect and financial exploitation that fairly reflect the circumstances and the gravity of harm.
- 4) Eliminate duplication of investigating agencies eg. Adult Protection Services and the Minnesota Health Department investigating the same case.

• **What are the likely impacts on the county social service system?**

The impact of the changes of the Minnesota Vulnerable Adult Act reform of 1995 will be felt immediately by the people working in the Common Entry Points. The extra time and training to set up the Common Entry Point will enhance service delivery in the long run. County social service workers can concentrate more on noninstitutionalized vulnerable adults because of the designation of lead administrative investigative agencies. The Departments of Health and Human Services will each investigate the facilities they license. There will be extensive training requirements that will include topics such as: the dynamics of adult abuse and neglect within family systems and the appropriate methods for interviewing relatives in the course of the assessment or investigation. The long term effects will have to be assessed after the new reforms have been in force for two to three years and at regular intervals after that time.

- **Is this a new problem?**

The problem of elder abuse is not new but the level of awareness of this problem is. The State of Minnesota has mandated the investigation of abuse and neglect at the county social service level. The level of funding for these mandated services has not risen proportionately to the enormity of the problems. The change in the demographics that reflects an aging population will continue to put enormous pressure on county social service budgets that must also provide for the protection of children. The counties will be forced to look at social work practices that promote prevention not more legalistic interventions.

- **Can the role of the social worker in advocating for vulnerable populations as a “mandated reporter” sometimes be a deterrant for getting help?**

The issue of self-neglect is another “gray area” for social workers. It brings together the differences of vulnerable adult law, the protective service laws and guardianship law. Some of the work that was done in the area of definitions and being consistent in the interpretation of a vulnerable adult helped to clarify these differences. The battered women’s advocates helped in differentiating domestic violence from the vulnerable adult designation to prevent them from being the subject of reports by hospital staff. This area needs much more study and research to actually get insights into best practices in these difficult areas.

- **What are the ethical implications for practice?**

The ethical implications for practice in the area of vulnerable adults is still very complex and challenging. Vulnerable adults deserve humane treatment and respect regardless of the situation. The reforms of the VAA law do not make these ethical dilemmas any easier to sort out. The National Association of Social Workers Code of Ethics provides some guidance in this area. Under ethical standards:

- **Commitment to Clients**

- Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)

- (NASW Code of Ethics p.7)

- **What are the likely policy impacts on preventive services for vulnerable adults?**

The area of preventive services needs much more emphasis and understanding in protecting vulnerable adults. One result of the new reform is the area of criminal background checks. This is a move for enacting more preventive services.

In the February 23, 1996 publication SESSION WEEKLY they featured a short article of one of the direct changes that happened as a result of this reform.



The bill would spend \$54,000 to extend criminal background checks to all nursing home employees, including housekeeping staff and maintenance workers. The provision expands current law which requires that state criminal histories be checked for employees in nursing homes , home care agencies, and boarding care homes who have direct contact with patients. A 1995 law that increased penalties for people who neglect or abuse vulnerable adults required such background checks for some nursing home employees. Since its passage, the Department of Human Services has initiated more than 8,100 background checks which uncovered 67 people who were disqualified from working in a nursing home.

( SESSION WEEKLY1996,p.17)

Preventive services are an area that the legislature needs to look at in the future for strengthening this VAA reform. More money for innovative programs will need to be appropriated. This is an area that social service agencies could have a positive impact on developing these services along with educational institutions and professional organizations like NASW.

## **Strengths of Framework**

The strengths of both Chambers and Spano's framework, are that it forces you to look at your own values as practitioners as you bring your own practice experience and wisdom when analyzing social policy. When looking at the reforms of the Vulnerable Adult Act the ideas that Spano has about setting social problems in a historical context helped me to see the dynamics of Minnesota's Vulnerable Adult Act 14 years after it was put into law.

The process when the Vulnerable Adult Act was written in 1980 and 1994 brought together many different groups around a common goal of writing legislation to protect vulnerable adults. In 1980 was the first attempt at providing for specific legislation to deal with the issues of elder abuse. In 1994 with over a decade of practice knowledge the law needed some major revisions in the areas of system coordination and improved education for those involved in the process and more precise definitions of terms, eg. abuse, neglect and financial exploitation. In 1980 the grassroots organizations were the leaders in writing the first Vulnerable Adult Act. In 1994 the organizations that took the leadership role were the Attorney General's Office and Care Providers of Minnesota, an association that represents nursing homes. Many of the same groups that advocated for the first VAA law, helped craft the reforms of the 1995 law eg. the state and metropolitan ombudsman.

In the coming three to five years we may see the tangible results of the reforms. The biggest changes will come in the reporting and data collection of incidents of elder abuse, neglect and financial exploitation. The reports for community dwelling elders and institutionalized elders will be investigated by two different agencies. By having county APS workers focus most of their time on community dwelling elders there can be more time spent helping those people in the community get the appropriate services. Unless more money is appropriated by the legislature to hire more social workers to keep up with the increase in reports, no real changes will occur in the system.

### **Limitations**

The limitations of Spano's historical framework are that it does not direct your attention directly to the group that is the subject of this social problem eg. vulnerable adults. The other two areas that Spano's framework does not have us consider are: 1) the international comparisons or the global perspectives of a social problem 2) history of a social problem like elder abuse can only be understood when there is recognition of the fact that history is biased towards the perspective of whichever groups are in power.

The limitations that I experienced personally were the time limits I had as a full-time worker, not being able to get to all the hearings and meetings at the legislature. The subject area I chose, elder abuse, has so many aspects to it that I could not possibly have gotten to all the material that is written.

## **CHAPTER FIVE**

### **DISCUSSION AND IMPLICATIONS**

#### **Implications For Social Work Practice**

Social work practitioners have a key role to play in the implementation of a new policy reform like the changes in the Minnesota Vulnerable Adults Act. The intent of the law is to streamline the reporting process and make it easier to report suspected abuse and neglect.

According to a 1990 Wilder Research Center Report about seniors in the metro area:

- The rate of growth for the elderly in Dakota, Washington, and Anoka counties will be much greater than the rate of growth within city areas.
- Along with the increase in individuals 85 and older will be an increase in the number of elderly who need help to function at home, the number who lack transportation, and the number who need other services.
- Due to lengthened life expectancy and differences in longevity between males and females , large numbers of the elderly (most of them female ) live alone for periods of time.
- The number of persons with Alzheimer's and similar diseases will increase.

(Fischer,1989)

These demographic changes impact the social service system that has become extremely complex and confusing. With these trends social workers working with older people are needed out in the community much more. Whether the resources will be there to get people away from their offices and paperwork, remains to be seen.

As older people live longer in their own homes with a more complex health care system, social workers are in a unique position to be an advocate and problem solver to navigate the system. Social workers are often the first professionals to see a person in their own home. With my own experience and background as a community social worker I find myself faced with increasingly more complex cases that take creative problem solving to coordinate services. An example of this would be the increase of families caregiving for parents from long distance. Also that I am seeing people with two or more chronic diseases and one of them may be Alzheimer's Disease. With the increase in service need the resources are not increasing to hire more people to see these complex cases.

The new provisions of the 1995 Vulnerable Adult Act reforms provide for some funding for training of investigators and common entry point staff. These may not be outreach social workers or advocates for older people. Under the bill there would be training about the specific changes in the law for individuals and organizations responsible for complying with the 1995 Vulnerable Adult Act. The bill does not allocate more

funding in the area of prevention and support services for the people who are experiencing the abuse, neglect or financial exploitation.

## **Ethical Issues**

Social workers are confronted with ethical issues all the time in day to day practice. Increasingly social workers are faced with having to report abuse or neglect which continues to highlight the tension in social work practice between empowerment and social control .

“What happens to the right of self-determination when a social worker is confronted with an elderly client who is judgmentally or emotionally impaired ? What is the proper balance between a client’s right to engage in self-destructive behavior and a service provider’s obligation to prevent harm? How are the rights of the community and the rights of the individual to be balanced when forced services and intervention are considered?”

(Special Committee on Aging, United States Senate, 1992, p. 18)

How do you balance your own values and standards with those of your clients? How do you make a report to Adult Protection and still have your clients’ trust and confidence ? How do you advocate on behalf of your client for the least restrictive alternative when you are getting pressure from other professionals, community members and family to do something about this persons self neglecting behavior? I would call these

the gray areas of practice when you must rely on your own practice wisdom and get support and input from colleagues.

The one model that is used in the county I work in, is a monthly multidisciplinary team where cases can be presented and feedback from others is exchanged. This gives you the opportunity to present ideas and talk about issues in a confidential and educational forum. People on the team represent workers from a variety of disciplines such as law enforcement, physicians, nurses, adult protection workers, community social workers, housing managers and CD counselors. This type of forum is extremely helpful with complex cases. The informal criteria for presenting cases are that they be multi-problematic and involve different agencies eg adult protection, public housing, public health nursing. The focus is a family systems model with the interests of the clients' as the core value.

### **Future Policy Research**

The research in this area of social work practice is vital if we are going to serve our clients well. The areas of research that need more emphasis and analysis are the social impacts of these laws on minority communities. In the summer of 1997 a national conference on "Understanding and Combating Elder Abuse in Minority Populations" was held. The conference was sponsored by the National Center on Elder Abuse and the Archstone Foundation. It is further recognition of exploding growth of the number of older minority persons. According to



the 1997 Administration on Aging /AARP “ A Profile of Older Americans,” predicts a 328% growth in the number of older minority persons between 1990 and 2030. (ncea EXCHANGE Fall,1997). More research is needed in the area of domestic violence and older people, whether there is value in cross disciplinary training of domestic violence workers and senior service workers. Also needed is more research on the effectiveness of the use of multidisciplinary teams in the provision of adult protective services. New service models need to look at the impact of my ethics and values as a social worker and the client’s values in making their own decisions. Public policy research needs to be done in a way that more practitioners and people directly affected by these laws are given access to the public policy process.

### **Effective Service Models**

Some of the more effective service models I looked at in my literature review were in the area of advocacy and peer support groups. The research in this area is fairly new in that it recognizes the problem of elder abuse in the context of domestic violence. Cabness (1989) describes the work being done at an emergency shelter for abused elderly called Dwelling Place. The shelter offers temporary housing for seven residents at one time, for a period of 90 days. The program has several components that include:

Supportive Counseling

A. A. Support Groups

Health Promotion

Peer Interaction

Transgenerational Activities

Active Case Management

The author concludes that the experience here suggests that that it may result in some positive change for the residents beyond providing protection. Pillemer and Wolf (1994) highlighted four “best practice models” developed by non-profit community agencies and a school of social work. They identified three common problems faced by these agencies trying to deal with elder abuse cases, including : (a) the fragmented human service system, (b) the resistance and reluctance of victims to accept services, and (c) the shortage of trained staff. The four examples include a multidisciplinary case conference team, a volunteer advocacy program, a victim support group and a master’s degree adult protective services track in social work. The biggest challenges of the four programs was securing permanent funding. (Pillemer and Wolf 1994). Another source of information that is highlighting new research and innovation has been the National Center on Elder Abuse through its newsletter and internet web site. As a practitioner in the field I have found it to be a new and current source of information.

## **Conclusions and Impacts of the Vulnerable Adult Reforms of 1995**

The process of introducing a public policy change is a dynamic one with many stops and starts along the way. The process that Minnesota followed to reform the Vulnerable Adult Act brought together many different groups to look at the areas of maltreatment, financial exploitation and neglect. The new reform took the old law and changed the way we report abuse and neglect in the state and tried to streamline a system that had become ineffective and confusing. The impacts that we may see immediately have more to do with the administration of the law than adding more money for services and innovative pilot projects. An example of an innovative project is the volunteer advocates and support group for older women sponsored by the St. Paul Intervention project.

The positive outcome of this process is that it brought more attention to the problem of elder maltreatment and family violence to the attention of legislators and administrators of public programs. In the coming years there will be more changes and pressure to change the 1995 reform as the demographics of our society continue to shift to an increasingly diverse and aging population. Some of the changes will need to include more funding and research into cross cultural and cross disciplinary training of adult protection workers and social service professionals in the field of family and domestic violence that include older adults.

On a personal note, watching the public policy process from the start of some of the policy discussions to watching the bill go through the legislative process was an eye opener and truly an experience that helped me observe this very dynamic process. It only reinforced my own personal belief that more social workers need to get involved in this dynamic public policy process. Social workers can get involved by joining groups like the League of Women Voters, the Minnesota Women's Consortium or serving on NASW's public policy committee.

## REFERENCES

Block, M., & Sinnott, J. (1979). The battered elder syndrome: An exploratory study. College Park, Maryland: University of Maryland

Brandl, B., & Raymond, J. (1996). Older abused and battered women: An invisible population. Wisconsin Medical Journal, May, 298-300.

Cabness, J. (1989), The Emergency Shelter : A model for building self-esteem of abused elders. Journal of Elder Abuse & Neglect. Vol. 1(2). 71-82

Callahan, J. (1988). Elder abuse: Some questions for policy makers. The Gerontologist, 28, 453-458.

Chambers, D. E. (1993). Social policy and social programs: A method for the practical public policy analyst. (2nd ed.) New York. Macmillan.

Chapin, R. K. (1995). Social policy development: the strengths perspective. Social Work, 40, 506-514.

Coleman, N., & Karp, N. (1989). Recent State and Federal Developments in Protective Services and Elder Abuse. Journal of Elder Abuse & Neglect . Vol. 1(3). , 51-63.

Duke, J. (1991). A national study of self-neglecting adult protective services clients. National Association of Adult Protective Services Administrators Virginia Department of Social Services. 1-30.

Faulkner, L. (1982). Mandating the reporting of suspected cases of elder abuse: An inappropriate, ineffective and ageist response to the abuse of older adults. Family Law Quarterly, 16(1), 69-91.

Fischer, L. R. (1989). The Minnesota Senior Study. WRC Report Wilder Research Center. 1. 1-16.

Fredriksen, K. (1989). Adult protective services: changes with the introduction of mandatory reporting. Journal of Elder Abuse & Neglect. 1(2), 59-70.

Giordano, N. H., & Giordano, J. A. (1984). Elder abuse: a review of the literature. Social Work. 29, 232-236

Griffin, L. W. & Williams, O. J. (1996). Elderly maltreatment and cultural diversity: when laws are not enough. Journal of Multicultural Social Work. 4(2). 1-13.

Hudson, M. (1989). Analyses of the concepts of elder mistreatment: Abuse and neglect. Journal of Abuse & Neglect, 1(1), 5-25.

Johnson, T. (1989). Elder mistreatment identification instruments: finding common ground. Journal of Elder Abuse & Neglect, 1(4), 15-36.

McDonald, G. (1991) Elder abuse effectiveness of reporting laws and other factors. General Accounting Office Report 1991. 1-30

Minnesota Attorney General's Office. (1994) The Minnesota Vulnerable Adult Act: An outline for reform. A working group report.

Minnesota Board on Aging. (1994) Elder maltreatment: A Minnesota guide to detection and intervention for community based health care providers

Minnesota Board on Aging. (1989) Minnesota Adult Protection Coalition. A statewide collaborative initiative to inform and mobilize the community to address the needs of vulnerable adults.

-

Moon, A., & Williams, O. (1993). Perceptions of elder abuse and help-seeking patterns among African-American, Caucasian American, and Korean- American elderly women. The Gerontologist, 33 (3), 386-395.

A Message From the Director of NCEA. (1997, Winter). ncea EXCHANGE , 4, (1) 1-15.

National Association of Social Workers. (1996). Code of Ethics [Brochure] Washington, DC

National Conference on Minority Elder Abuse a Success. (1997, Fall). ncea EXCHANGE. 4(2) 1-15.

Netting, E., Paton, R., & Huber, R. (1992). The long-term care ombudsman program: What does the complaint reporting system tell us? The Gerontologist, 32, 843-848.

Omnibus human services bill. (1996, February 23). SESSION WEEKLY, 6 16-17.

Pillemer, K., & Finkelhor, D. (1988). The prevalence of elder abuse: A random sample survey. The Gerontologist, 28, 51-57.



Pillemer, K., & Finkelhor, D. (1989). Causes of elder abuse: Caregiver stress versus problem relatives. American Journal of Orthopsychiatry, 59, 179-187.

Pillemer, K., & Moore, D. (1989). Abuse of patients in nursing homes : Findings from a survey of staff. The Gerontologist, 29, 314-320.

Podnieks, E. (1992). National survey on abuse of the elderly in Canada. Journal of Elder Abuse & Neglect,4, 5-58.

Regan, J. (1981). Protecting the elderly: The new paternalism. The Hastings Law Journal, 32, 1111-1132.

Spano, R. (1993). Creating the context for the analysis of social policies : Understanding the historical context. In D. E. Chambers (Ed.), Social policy and social programs: A method for the practical policy analyst ( pp. 35-49). New York: Macmillan.

Special Committee on Aging, United States Senate. (1992). An Advocate's Guide to Laws and Programs Addressing Elder Abuse. No. 102-1, July 7, Washington DC : U.S. Government Printing Office.

Subcommittee on Health and Long Term Care of the Select Committee on Aging, House of Representatives. (1990). Elder Abuse a Decade of Shame and Inaction. No. 101-752 April, Washington DC: U. S. Government Printing Office.

Tatara, T. (1993). Understanding the nature and scope of domestic elder abuse with the use of state aggregate data : Summaries of the key findings of a national survey of state APS and aging agencies. Journal of Elder Abuse & Neglect, 4 , 35-57.

Tatara, T. (1995). An analysis of state laws addressing elder abuse, neglect, and exploitation. A final report. National Center on Elder Abuse, Washington DC

Vulnerable Adult Act Amendments, H.R. House File No. 598, , Seventy-Ninth Legislature, (1995).

Weiner, A. (1991). A community-based education model for identification and prevention of elder abuse. Journal of Gerontological Social Work (3/4), 107-11.

Wolf, R. S., & Pillemer, K. (1994). What's new in elder abuse programming? Four bright ideas. The Gerontologist 34(1), 126-129.

# **APPENDICES**

# **APPENDIX A**

Subd. 17. **RETALIATION PROHIBITED.**

(a) A facility or person shall not retaliate against any person who reports in good faith suspected maltreatment pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report.

(b) In addition to any remedies allowed under sections 181.931 to 181.935, any facility or person which retaliates against any person because of a report of suspected maltreatment is liable to that person for actual damages, punitive damages up to \$10,000, and attorney's fees.

(c) There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of a report, is retaliatory. For purposes of this clause, the term "adverse action" refers to action taken by a facility or person involved in a report against the person making the report or the person with respect to whom the report was made because of the report, and includes, but is not limited to: (1) Discharge or transfer from the facility; (2) Discharge from or termination of employment; (3) Demotion or reduction in remuneration for services; (4) Restriction or prohibition of access to the facility or its residents; or (5) Any restriction of rights set forth in section 144.651.

Subd. 18. **OUTREACH.** The commissioner of human services shall maintain an aggressive program to educate those required to report, as well as the general public, about the requirements of this section using a variety of media. The commissioner of human services shall print and make available the form developed under subdivision 9.

**626.5572 DEFINITIONS.**

Subdivision 1. **SCOPE.** For the purpose of section 626.557, the following terms have the meanings given them, unless otherwise specified.

Subd. 2. **ABUSE.** "Abuse" means:

(a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:

(1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;

(2) the use of drugs to injure or facilitate crime as defined in section 609.235;

(3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322;

and

(4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451.

A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:

(1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;

(2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening;

(3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and

(4) use of any aversive or deprivation procedures for persons with developmental disabilities or

or boarding care homes.

(b) The department of human services is the lead agency for the programs licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, mental health programs, chemical health programs, or personal care provider organizations.

(c) The county social service agency or its designee is the lead agency for all other reports.

Subd. 14. **LEGAL AUTHORITY.** "Legal authority" includes, but is not limited to: (1) a fiduciary obligation recognized elsewhere in law, including pertinent regulations; (2) a contractual obligation; or (3) documented consent by a competent person.

Subd. 15. **MALTREATMENT.** "Maltreatment" means abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.

Subd. 16. **MANDATED REPORTER.** "Mandated reporter" means a professional or professional's delegate while engaged in: (1) social services; (2) law enforcement; (3) education; (4) the care of vulnerable adults; (5) any of the occupations referred to in section 214.01, subdivision 2; (6) an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation; (7) an employee or person providing services in a facility as defined in subdivision 6; or (8) a person that performs the duties of the medical examiner or coroner.

Subd. 17. **NEGLECT.** "Neglect" means:

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and

(2) which is not the result of an accident or therapeutic conduct.

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or section 253B.03, or 525.539 to 525.6199, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care,

related conditions not authorized under section 245.825.

(c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.

(d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

(e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section 253B.03 or 525.539 to 525.6199, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:

(1) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(2) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.

(f) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.

(g) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

(1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Subd. 3. **ACCIDENT.** "Accident" means a sudden, unforeseen, and unexpected occurrence or event which:

(1) is not likely to occur and which could not have been prevented by exercise of due care; and

(2) if occurring while a vulnerable adult is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

Subd. 4. **CAREGIVER.** "Caregiver" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.

Subd. 5. **COMMON ENTRY POINT.** "Common entry point" means the entity designated by each county responsible for receiving reports under section 626.557.

Subd. 6. **FACILITY.**

(a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a

residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; a home care provider licensed or required to be licensed under section 144A.46; or a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, and 256B.0627.

(b) For home care providers and personal care attendants, the term "facility" refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client's home or other location at which services are rendered.

Subd. 7. **FALSE.** "False" means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur.

Subd. 8. **FINAL DISPOSITION.** "Final disposition" is the determination of an investigation by a lead agency that a report of maltreatment under this act is substantiated, inconclusive, false, or that no determination will be made. When a lead agency determination has substantiated maltreatment, the final disposition also identifies, if known, which individual or individuals were responsible for the substantiated maltreatment, and whether a facility was responsible for the substantiated maltreatment.

Subd. 9. **FINANCIAL EXPLOITATION.** "Financial exploitation" means:

(a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501 a person:

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or

(2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

(b) In the absence of legal authority a person:

(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;

(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;

(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or

(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

(c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

Subd. 10. **IMMEDIATELY.** "Immediately" means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.

Subd. 11. **INCONCLUSIVE.** "Inconclusive" means there is less than a preponderance of evidence to show that maltreatment did or did not occur.

Subd. 12. **INITIAL DISPOSITION.** "Initial disposition" is the lead agency's determination of whether the report will be assigned for further investigation.

Subd. 13. **LEAD AGENCY.** "Lead agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The department of health is the lead agency for the facilities which are licensed or are required to be licensed as hospitals, home care providers, nursing homes, residential care homes,



provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with: (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or

(4) an individual makes a single mistake in the provision of therapeutic conduct to a vulnerable adult which: (i) does not result in injury or harm which reasonably requires the care of a physician or mental health professional, whether or not the care was sought; (ii) is immediately reported internally by the employee or person providing services in the facility; and (iii) is sufficiently documented for review and evaluation by the facility and any applicable licensing and certification agency.

(d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.

Subd. 18. **REPORT.** "Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

Subd. 19. **SUBSTANTIATED.** "Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

Subd. 20. **THERAPEUTIC CONDUCT.** "Therapeutic conduct" means the provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by: (1) an individual, facility, or employee or person providing services in a facility under the rights, privileges and responsibilities conferred by state license, certification, or registration; or (2) a caregiver.

Subd. 21. **VULNERABLE ADULT.** "Vulnerable adult" means any person 18 years of age or older who:

(1) is a resident or inpatient of a facility;

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under section 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, and 256B.0627; or

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

(ii) because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.

**626.5573 NEGLIGENCE ACTIONS.** A violation of sections 626.557 to 626.5572 shall be admissible as evidence of negligence, but shall not be considered negligence per se.

**REPEALER.**

Minnesota Statutes 1994, section 626.557, subdivisions 2, 10a, 11, 11a, 12, 13, 15, and 19, are repealed.

**EFFECTIVE DATE.**

Sections 15 and 19 are effective July 1, 1995. Sections 1 to 14, 16 to 18, and 20 to 24 are effective October 1, 1995.

# **APPENDIX B**

**H. F.** 598, the second engrossment **S.F.**

**SUBJECT:** Protection for Vulnerable Adults

**AUTHORS:** Greenfield, Skoglund, Seagren, and Wejcman

**COMMITTEE:** Health and Human Service Finance Division

**ANALYST:** Maureen Bellis, 296-5044 **DATE:** April 7, 1995  
Emily Shapiro, 296-5041

### ARTICLE 1

#### VULNERABLE ADULTS ACT AMENDMENTS

##### Section

- 1 **Public policy.** Amends section 626.557, subdivision 1, in the Vulnerable Adults Act to revise the policy statement, to make technical changes, and to clarify the inclusion of persons in the community.
- 2 **Timing of report.** Amends section 626.557, subdivision 3, to delete language made obsolete by this act and to specify that mandated reporters must report suspected cases of maltreatment immediately to a new entity, called the common entry point.
- 3 **Report not required.** Amends section 626.557, subdivision 3a to <sup>define</sup> ~~add~~ accidents ~~to those~~ (events that need not be reported as maltreatment).
- 4 **Reporting.** Amends section 626.557, subdivision 4. Requires a mandated reporter to immediately make an oral report to the common entry point. Deletes language relating to written reports.
- 5 **Internal reporting of maltreatment.** Amends section 626.557 to add a new subdivision (4a) requiring a facility to have an internal reporting procedure. Specifies requirements for handling internal reports from mandated reporters.
- 6 **Immunity; Protection for reporters.** Specifies that an individual who makes a good faith report or participates in an investigation under this act is immune from civil or criminal liability. Protects the identity of the reporter.

Section

- 15 **Education requirements.** Adds subdivision 9e to section 626.557. Requires the commissioners of health, human services, and public safety to cooperate in the development of an educational program for lead agency investigators; to offer annual training seminars; to provide training for CEP staff. Requires the department of public safety to notify law enforcement officers of the requirements of this act. Specifies training requirements for lead agency investigators.
- 16 **Duties of the county social service agency.** Amends section 626.557, subdivision 10, to specify the duties of the local social service agency after it receives a report from the CEP. Deletes obligations of the local social service agency which are made obsolete under this act. Authorizes the county social service agency to enter facilities and copy records as part of investigations.
- 17 **Data management.** Adds a subdivision 12b to section 626.557. Specifies the data management responsibilities of the county social service agency and the lead agency. Sets procedures and timelines for destruction of data, for record retention, and for exchange of information. Requires notification of affected parties and compliance with federal requirements.
- 18 **Abuse prevention plans.** Amends section 626.557, subdivision 14, to specify that the term facility includes home health care agencies.
- 19 **Implementation authority.** Amends section 626.557, subdivision 16, to delete obsolete requirements and to specify that, by September 1, 1995, the attorney general and the commissioners of health and of human services shall develop the common report form required in subdivision 9. Requires the commissioners of health, human services and public safety, by December 31, 1995, to develop criteria for a statewide database which will utilize the information received in maltreatment reports. By September 1, 1995, requires each lead agency to develop the guidelines required by subdivision 9b.
- 20 **Retaliation prohibited.** Amends section 626.557, subdivision 17, to specify the remedies for retaliation against persons who report maltreatment. Authorizes punitive damages and attorney's fees.
- 21 **Outreach.** Requires the commissioner of human services to maintain an outreach program and to print and make available the form required in subdivision 9.
- 22 **Definitions.** Adds a new section [626.5572] to the Vulnerable Adult's Act containing revised definitions of the following terms: abuse, accident, caregiver, common entry point, facility, false, final disposition, financial exploitation, immediately, inconclusive, initial disposition, lead agency, legal authority, maltreatment, mandated reporter, neglect, report, substantiated, therapeutic conduct, and vulnerable adult.
- 23 **Negligence actions.** Provides that a violation of the Vulnerable Adult's Act shall be

Section

## 4 Criminal neglect.

**Subdivision 1. Crime.** Provides that the following acts and omissions constitute criminal neglect if the act or omission constitutes a conscious disregard for danger to human life and reckless indifference to the risk of harm and does not constitute therapeutic conduct;

- the failure or omission to supply a vulnerable adult with care or services necessary to the adult's physical or mental health or safety; or
- knowingly permitting conditions to exist that result in the abuse or neglect of a vulnerable adult, by failing to take corrective action within the scope of the actor's authority.

~~Makes clear that the mental state required for this crime is greater than that required in ordinary or gross negligence.~~

**Subd. 2. Exemptions.** Exempts certain conduct from the criminal neglect crime, including the vulnerable adult's refusal to or withdrawal of consent to treatment in accordance with applicable law, reliance on spiritual healing, and consensual sexual contact with a personal care attendant or in situations where a consensual sexual relationship existed prior to the caregiving relationship.

**Subd. 3. Penalties.** Provides ~~felony and gross misdemeanor penalties for~~ subjecting a vulnerable adult to criminal neglect, ~~with the penalty calibrated to the degree of physical harm suffered by the victim.~~

**Subd. 4. Defenses.** Provides that nothing in this section requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license or other regulation.

5 ~~Intentional neglect.~~ Provides a misdemeanor penalty for a caregiver or operator to intentionally neglect a vulnerable adult causing less than substantial bodily harm, even though the neglectful act or omission did not constitute a conscious disregard for danger to human life and reckless disregard to the risk of harm.

## 6 Financial exploitation of a vulnerable adult.

**Subdivision 1. Crime.** Provides that the following conduct constitutes financial exploitation of a vulnerable adult:

- in breach of a fiduciary obligation, intentionally failing to use the vulnerable adult's financial resources to provide the adult with necessary care or services, or knowingly permitting conditions to exist which result in the financial exploitation

Section

## ARTICLE 3

## OTHER LAWS AFFECTING VULNERABLE ADULTS

Section

- 1 **Vulnerable adult identity data.** Amends section 13.82 of the Data Practices Act, to add a subdivision which specifies the data categories for the subject and the reporter in active or inactive investigative data relating to maltreatment of vulnerable adults.
- 2 **Inactive vulnerable adult maltreatment data.** Amends section 13.82, to add a subdivision 5d, dealing with the status of investigative data relating to maltreatment of vulnerable adults, that becomes inactive.
- 3 **Protection of identities.** Amends section 13.82, subdivision 10, relating to instances in which law enforcement can withhold public access to data, to allow withholding when access would reveal the identity of a mandated reporter under the vulnerable adult's act.
- 4 **Background studies on licensees.** Proposes coding for new law at section 144.057. Requires the commissioner of health to do criminal background checks on employees of hospitals, nursing homes, and home care providers, using the procedures of the human services licensing act and the background check rule. Requires facilities to cooperate in implementation of this section.
- 5 **Study of the applicant.** Amends section 245A.04, subdivision 3, of the human services licensing act, relating to background checks for applicants and license holders, to authorize the commissioner of health to assist in the studies. Adds personal care attendants to the list of persons to be studied. Requires disqualification of applicants and license holders (or their employees) if they failed to report maltreatment of vulnerable adults which was later substantiated or was recurring or serious.
- 6 **Powers of the state agency.** Amends section 256.045, subdivision 1, relating to administrative hearings held by the department of human services, to insert a cross-reference.
- 7 **State agency hearings.** Amends section 256.045, subdivision 3, to permit an individual or a facility to challenge a determination that they have maltreated a vulnerable adult.
- 8 **Standard of evidence for maltreatment hearings.** Requires the referee to determine if a preponderance of evidence support the determination that maltreatment occurred.

# **APPENDIX C**



**Support for the  
Vulnerable Adult Act  
Reform Initiative  
SF 512**

**Care Providers of Minnesota**

**Minnesota Nurses Association**

**United Food & Commercial Workers Union**

**Minnesota Alliance for Health Care Consumers**

**Minnesota Chiefs of Police**

**Minnesota State Sheriffs Association**

**Association of Residential Resources in Minnesota**

**Office of Ombudsman for Older Minnesotans**

**Minnesota Board on Aging**

**Minnesota Senior Federation**

**Minnesota Disability Law Center**

**Minnesota Association of County Social Service Administrators**

**American Association of Retired Persons**

**Office of the Ombudsman for Mental Health and Mental Retardation**

# Care Providers Of Minnesota

February 1, 1995

Dear Members of the Minnesota Legislature,

Care Providers of Minnesota is proud to support the Vulnerable Adult Act Reform Initiative you will consider during the current session. The legislation offers greater precision, simplicity, efficiency, and fairness to a system designed to protect some of society's most easily victimized members.

For over two years, our association has been a prominent leader in assembling the divergent interests of providers, consumers, law enforcement, state agencies, and employee organizations into a collaborative working group to identify problems with the current vulnerable adults system and propose consensus solutions. The proposed legislation represents the consensus opinion from many organizations and over 40 working group meetings.

There are numerous sections that improve Minnesota's vulnerable adult protection system. Most notably the bill establishes a streamlined reporting and investigation process that will reduce the current confusion over reporting and eliminate the duplicative investigations of alleged incidents. This will give both consumers and providers more faith in the vulnerable adults protection process. In addition, the legislation contains clarifying definitions of abuse, neglect, accident, and financial exploitation so providers, consumers, and law enforcement officials will know what to report and how to respond.

Care Providers of Minnesota urges swift passage of the Vulnerable Adults Act Reform legislation. This legislation represents the very best in public policy development. Interested parties have joined together in an inclusive process to air concerns and negotiate the details prior to introduction in the legislature. The goal in this collaborative process has always been to improve the way in which we protect people whose physical, medical, and mental disability make them particularly vulnerable citizens.

Sincerely,

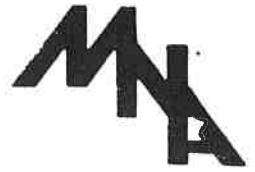


Dennis Kamstra  
Chairman of the Board



# MINNESOTA NURSES ASSOCIATION

1295 BANDANA BLVD NO., SUITE 140  
ST. PAUL, MINNESOTA 55108-5115  
(612) 646-4807 or 1-800-536-4662  
FAX: (612) 647-5301



*MNA Board of Directors*

*MNA Executive Director*

*Mary Ellen Imdieke RN  
President*

*Marilyn Cunningham, RN*

February 8, 1995

*Deve Langdon RN  
1st Vice President*

Attorney General  
Skip Humphrey

*Anniter McNeilson, RN  
2nd Vice President*

The Honorable Skip Humphrey,

*Janne Waagren RN  
Secretary*

Please consider this letter as confirmation that the Minnesota Nurses Associations supports the draft legislation dated 2/6/95 on the vulnerable adult act. This legislation will make the administration of the VAA easier by the creation of a statewide system for investigating complaints of maltreatment of vulnerable adults. It is our belief that this bill will make it possible to identify those individuals who seek to harm our most vulnerable citizens and will also assure that they do not remain in a position to continue to cause harm.

*Peter Mitchell RN  
Treasurer*

*Calvin Anderson RN  
Director*

*Glenn Anderson, RN  
Director*

As nurses, we are committed to assuring the safety of the patients we serve and we are appalled that there are circumstances in which caregivers take advantage of the trust of others.

*Kathleen Boehn, RN  
Director*

*Monicaramer, RN  
Director*

We are very pleased that your office has been willing to work with our association to craft a bill which addresses concerns about patient protection without taking a heavy handed approach which could penalize well intentioned caregivers for minor errors occurring during the course of providing care.

*Carol Murcny, RN  
Director*

*Jeannette O'Brien, RN  
Director*

We look forward to continuing to work with you and your staff on this bill as it is brought forward at the legislature.

*Cheryl Schnorenberg, RN  
Director*

Thank you for all of your hard work.

Sincerely,

Mary Ellen Imdieke, RN  
President  
Minnesota Nurses Association

SS:MEI:sf Humphrey  
GA Letters



United Food & Commercial Workers Union  
Local 789 AFL-CIO-CLC  
266 Hardman Avenue  
South St. Paul, MN 55075  
(612) 451-6240

February 10, 1995

Dear Members of the Legislature:

Imagine having a job where you spend countless hours wiping diarrhea from incontinent residents.

Imagine coming to work for the ninth day in a row, only to find you're three aides short and you've been assigned twenty residents. Oh and by the way, you're scheduled sixteen hours that day.

Compound the nightmare by realizing after twenty years on the job, your back is killing you. Unfortunately, you have no pension and no savings because you finally just started making ten dollars an hour.

Compound it more by attending the yearly inservice on the current vulnerable adult act. A charge nurse explains the facts of life. If a resident complains of "abuse" you're indefinitely suspended pending an investigation. The Office of Health Facility Complaints is called. The local police department is contacted. The county social service agency is notified.

Like the old Blues Brothers movie; they respond like they are on a mission from God. The objective, seek and destroy the abuser. So what if the complaint is filed by an angry resident who is lonely and desperately needs a little attention. So what if the charges are levied by a co-worker who hates you. So what if your abusive behavior was a result of trying to protect yourself from a male resident who had grabbed your breast and wouldn't let go until you slapped him.

You see, none of this matters under the current Vulnerable Adult Act. The old law is a mishmash of unclarity and inconsistency. It's a piece of legislation that left no room for human error, self defense or forgiveness. Fact is, if you are found guilty, you can spend thousands of dollars in legal fees. Even with a good attorney, the outcome all too often results in never being able to work in a nursing home again.

That's right.....barred for life. What other profession places such high standards on employees? What other profession doesn't allow for absolution and reconsideration? What other profession demands so much and returns so little?

Affiliated with United Food  
and Commercial Workers  
International Union AFL-CIO-CLC



None! That's how and why I got on the working group assigned to rewriting the Vulnerable Adult Act. Of our eighteen hundred members working in long term care facilities, most are in absolute fear of charges being brought. I have witnessed lives destroyed on the basis of a senile resident signing a statement, or a disgruntled co-worker willing to lie to get even. It must stop, and it stop now.

Your action and support of this bill will help relieve some of the frustration and anxiety our members live and work under. I am proud of our commitment and efforts in reshaping this important piece of legislation. While none of the various groups got everything they wanted, the end product is a thousand times better than what we had.

Please, for the sake of all long term care employees, join us. We need to insure this bill becomes law during this session. As President of UFCW Local 789 and its 7000 members, we feel this is one of the most important pieces of legislation you will deal with.

**SUPPORT THE 1995 VAA REFORM INITIATIVE.**

Sincerely,

A handwritten signature in black ink, appearing to read "William G. Pearson", with a long horizontal line extending to the right.

William G. Pearson  
President  
UFCW Local 789

BP/tmg



**MINNESOTA  
ALLIANCE for  
HEALTH CARE  
CONSUMERS**

6 East 82nd Street  
e 220  
omington, Minnesota  
25-1381

**CONSUMER COUNCIL  
EDUCATION AND  
MEMBERSHIP**

**EDUCATIONAL  
INITIATIVES**

(2) 854-7304

**TRO AREA NURSING  
THE OMBUDSMAN**

(2) 854-7360

**simile Number**

(2) 854-8535

promoting consumer  
tection and quality of  
n long-term care

February 22, 1995

The Honorable Allan H. Spear  
Minnesota Senate  
G-27 State Capitol  
St. Paul, MN 55155

Dear Senator Spear:

On behalf of the MN Alliance for Health Care Consumers, I write to convey support for the comprehensive reform of the Vulnerable Adults Act in S.F. 512. The MN Alliance, a membership organization of nursing home residents and their families, has long advanced an effective protective service system. The 1980 enactment of the law was a milestone. Today we reach for another.

When consumers responded to a survey about the issue in the fall of 1993, the messages were clear. "Make the system comprehensible," they wrote. "Give the agencies the needed authority. Make the response timely. Give the law teeth." These aspirations guided a broad-based working group through months of discussions, differences, discoveries, and decisions. The resulting bill represents substantial effort and compromise.

For our membership, several proposed changes are of primary importance. The sharpened investigative process, with accelerated response for cases with imminent risk, timelines, and follow-up with the reporter, improve accountability. Identifying financial exploitation as a distinct category of maltreatment with consequences will improve our intervention when misspent funds threaten shelter or care. The expanded background study and disqualification provisions will strengthen our capacity to deem some behavior as unacceptable in the care of vulnerable adults.

Much attention was given to building a realistic range of consequences for maltreatment, recognizing the need to correct isolated errors, and to recommend stronger penalties for the most serious and intentional criminal acts wherever they occur. Finally, the proposal enhances penalties for retaliation in order to promote the integrity of the system.

We are aiming for a system that vulnerable people can trust, and S.F. 512 is a promising blueprint. Thank you for your pioneering work in the protection of vulnerable adults and for your leadership on this proposed legislation.

Sincerely,

  
Iris C. Freeman  
Executive Director



## Minnesota Chiefs of Police Association

1220 South Concord Street, South Saint Paul, MN 55075  
612/457-0677 • 800/377-4058 Wats • 612/457-5665 Fax



February 6, 1995

Ms. Mamie Segall  
Office of the Attorney General  
Suite 1400  
NCL  
445 Minnesota Street  
St. Paul, MN 55101

Dear Ms. Segall,

I have recently reviewed the 1995 Vulnerable Adults Reform Initiative that has been prepared for the legislature. I have discussed this legislation with Chief John Spetch of the Robbinsdale Police Department, our representative to the VAA working group. The legislation has also been brought before the Board of Directors of the Minnesota Chiefs of Police Association for their review and comments. As a result, we are pleased to offer our endorsement and pledge of support for this extensive effort.

We understand the great number of hours and the great amount of work that has been done by people all over the system on behalf of this very unique segment of our population. The Minnesota Chiefs of Police Association supports the introduction and passage of this bill, and will provide whatever assistance that we can to assist in a smooth transaction through the legislature.

If I can be of any service, please feel free to call upon me.

Yours truly,

A handwritten signature in cursive script, appearing to read "Dennis J. Delmont".

Dennis J. Delmont  
Chairman  
MCOPA

DJD/bt



# Minnesota

## STATE SHERIFFS ASSOCIATION

Box 623, South St. Paul, MN 55075 • Telephone (612) 451-7216  
Fax (612) 451-8087

February 9, 1995

Dear Members of the Legislature:

*At its Winter Conference, the Minnesota Sheriffs' Association voted unanimously to support passage of the Vulnerable Adult Reform Initiative.*

*The Initiative is designed to help protect vulnerable adults. It would replace the current system of multiple reporting to one in which responsibility is clear and reports are immediately directed to the appropriate agency.*

*The Initiative would improve the definitions associated with vulnerable adult abuse and would aid the ability of law enforcement personnel in making consistent determination regarding specific conduct.*

*The Initiative also would make specific the crimes and the penalties for abuse of vulnerable adults. That would provide for clear notice of Minnesota requirements and the consequences for violation.*

*It is vitally important that we protect vulnerable adults. The Initiative is a carefully reasoned measure designed to create a responsive, effective and well-coordinated approach to fulfilling this obligation.*

*The Minnesota Sheriffs' Association strongly urges your support of this measure.*

Sincerely,

A handwritten signature in cursive script that reads "James R. Trudeau".

James R. Trudeau  
Executive Director

JT:sz





# ARRM

Association of Residential Resources in Minnesota

26 East Exchange Street Suite # 503 • Saint Paul, MN 55101-2275  
Phone: 612-291-1086 • 800-551-2211 • Fax: 612/290-2266 • 612/293-9389

---

February 16, 1995

Hubert H. Humphrey III  
Office of the Attorney General  
102 Capitol  
St. Paul, MN 55155

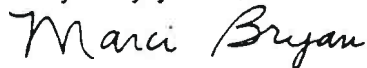
Dear Attorney General Humphrey,

The Membership of the Association of Residential Resources in Minnesota is pleased to formally endorse the reform of the Vulnerable Adult Act.

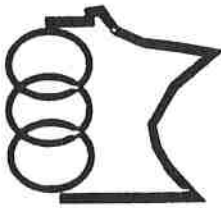
When we developed and promoted legislation to make significant changes in the VAA in 1993, we did not expect to find so many interested colleagues who were experiencing the same dissatisfactions that our members had: confusing and unclear definitions, duplicative administrative proceedings, lack of timely response and investigation. We believe the proposed reforms address these primary concerns of our industry.

We value your support and that of the many stakeholders who are committed to seeing these proposed reforms become reality.

Very truly yours,



Marcia B. Bryan, Ed.D.  
Executive Director



**Office of  
Ombudsman for  
Older Minnesotans**

444 Lafayette Rd. N., St. Paul, MN 55155 - 3843  
(612)296-0382 • 1 (800) 657-3591 • FAX (612) 297-7855

February 24, 1995

Dear Senator Spear and Members of the Committee

The Office of Ombudsman for Older Minnesotans investigates complaints on behalf of consumers of nursing home, residential care, home care, and acute health care services. In 1994 we assisted almost 12,000 consumers with complaints or problems with the system of services for people needing support, assistance and care to function. About 7% or 791 individuals contacted our office with concerns about the abuse or neglect of a vulnerable person in 1994. In assisting these individuals our office has become convinced that major reform of our current protection system is necessary. Our office supports Senate File 512 as a tremendous step forward to improve Minnesota's response to the adult victims of abuse, neglect and financial exploitation.

Our strongest support is for the improvements this bill makes in the following areas:

- \* The new definition of financial exploitation will go a long way in assisting older people who are victims of financial rip offs;
- \* The concept of a common entry point for reports with immediate feedback for the reporter on the initial disposition;
- \* The designation of lead investigative agencies with clear timelines for response will enable consumers to hold agencies accountable;
- \* The ability for victims to contest the findings of the lead investigative agency;
- \* The strengthening of the penalties that may be imposed to deal with the perpetrators of abuse, neglect and exploitation.

The Office of Ombudsman for Older Minnesotans urges the committee to pass Senate File 512. Thank you for considering our views.

Sincerely,

Sharon Zoesch  
Ombudsman for Older Minnesotans

**Minnesota Board on Aging**

*an equal opportunity employer*



# Minnesota Board on Aging

444 Lafayette Road  
St. Paul, Minnesota 55155-3843  
612/296-2770 1-800-882-6262 FAX 612/297-7855

February 24, 1995

Honorable Allan Spear  
Minnesota Senate  
G-27 Capitol  
St. Paul, Minnesota 55155

Dear Senator Spear:

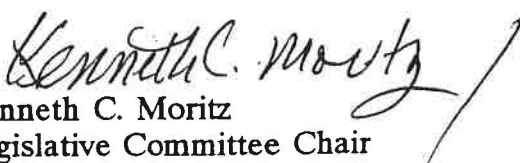
The **Minnesota Board on Aging** is pleased to support your bill amending the Vulnerable Adult Act, Senate File # 512. We have made the Vulnerable Adult Act Amendments one of our legislative priorities.

The Vulnerable Adult Act has been law for over 14 years, and a lot of good has been accomplished because of its existence. However, portions of the Act have, through time, become unclear and the protections originally envisioned have not always been available because of role confusion or lack of adequate penalties or remedies. And while the Vulnerable Adult Act strongly addresses the issue of protection in our institutions community base services, which is one of the fastest growing aspects of services to the elderly and vulnerable adults, have not been as adequately addressed.

The revisions of the Vulnerable Adult Act made by this Bill and the amendments to the Criminal Code and other Statute Sections, bring clarity and effectiveness to a "system" in need of reform. We believe enactment of this bill important to those vulnerable citizens, especially the frail elderly, who require protection from maltreatment.

How fitting that you, the original Senate author of this Act are sponsoring this important legislation.

Sincerely,

  
Kenneth C. Moritz  
Legislative Committee Chair  
Minnesota Board on Aging



Minnesota Department of Human Services  
an equal opportunity employer



# Minnesota Senior Federation

---

REGIONS:

Central

Heartland

Iron Range

Metropolitan

Midwest

Minnesota Valley

Northeast

Northwest

Seven County

South Central

Southeast

Southwest

February 21, 1995

Dear Legislator:

An initiative reforming the Vulnerable Adult Act (VAA) is being proposed by the Attorney General's office and authored by Senator Alan Spear and Representative Lee Greenfield. The Minnesota Senior Federation offers the following comments of the proposed legislation.

This legislation takes steps forward to protect our vulnerable citizens in Minnesota. It provides for clearer definitions, an easier reporting system and a quicker investigation to reported incidents. We support this attempt and encourage any additions to further strengthen protections for our vulnerable adults.

In enacting new Vulnerable Adult legislation, legislators must always keep in mind the population group they are trying to protect. The legislation must be strong and not be allowed to be weakened which would result in further vulnerability of this group.

Sincerely,

Al Sollom  
President

EXECUTIVE DIRECTOR  
Terry Lane

MANAGING ATTORNEYS  
Luther A. Granquist  
Patricia M. Siebert

PROGRAM DEVELOPMENT  
COORDINATOR  
Lisa Cohen

CLIENT ASSISTANCE PROJECT  
Roseann S. Eshbach, Attorney  
Dorothy A. Sweeney, Advocate

PROTECTION AND ADVOCACY FOR  
INDIVIDUAL RIGHTS  
Kathleen Hagen, Attorney  
Dorothy J. Macpherson, III, Attorney

## MINNESOTA DISABILITY LAW CENTER

THE PROTECTION & ADVOCACY  
SYSTEM FOR MINNESOTA

430 FIRST AVENUE NORTH, SUITE 300  
MINNEAPOLIS, MN 55401-1780  
(612) 332-1441  
(TDD) 332-4668  
Toll Free 1-800-292-4150  
FAX (612) 334-5755

LEGAL ADVOCACY FOR  
PERSONS WITH  
DEVELOPMENTAL DISABILITIES  
Linda Bonnev, Advocate (Grand Rapids)  
Barbara Case, Attorney  
Kirsten Lass Dubbels, Advocate (Fergus Falls)  
Anne L. Henry, Attorney  
Sandra M. Moore, Advocate (Duluth)  
Anita D. Schermer, Program Specialist

MENTAL HEALTH LAW PROJECT  
Pamela S. Hoopes, Attorney  
Kathy S. Kosnoff, Attorney  
Sharon Sanders, Advocate (Duluth)  
Marilyn Spensley, Advocate (Park Rapids)  
Richard Wayman, Attorney

February 23, 1995

Senator Allan H. Spear  
G-27 State Capitol  
Saint Paul, Minnesota 55155

**RE: Vulnerable Adult Act Changes, S.F. 512**

Dear Senator Spear:

The Minnesota Disability Law Center is supportive of the Vulnerable Adult Act amendments which you are sponsoring, Senate File 512. Our office represents many individuals affected by the Vulnerable Adult Act who have a variety of disabilities and reside both in facilities and independently in their own homes. We support the efforts in S.F. 512 to clarify and streamline the reporting process. We believe that the changes in your bill will make it clearer and simpler for reports to be taken and investigated. We are strongly in support of the establishment of time lines for investigations and reports contained in the bill. The establishment of these time lines should improve the responsiveness and accountability of agencies for investigating complaints made on behalf of vulnerable adults.

We believe the establishment of a "common entry point" which is available 24 hours a day to take reports on a form which has been developed and will be used statewide is a positive change which should simplify the implementation of the Vulnerable Adult Act. The training requirements and efforts to coordinate between law enforcement, health, human services and county agencies would be a welcome improvement to the current system. The establishment of a centralized data base will also be helpful in identifying repeated incidences of abuse and neglect. We believe that the education requirements for investigators in this area are needed and support the development of such programs so that sound investigative techniques will be used in following up on reports under this Act.

We have two areas of concern which we will discuss with members of the task force who have developed these amendments. The two issues are the absence in the bill of notice to the vulnerable adult and any guardian or conservator when a report is made, and the problem

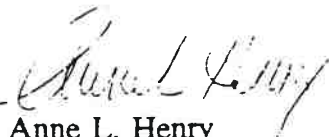
Senator Allan H. Spear  
February 23, 1995  
Page 2

raised by recipients of personal care assistant (PCA) services who direct their own care regarding the prohibition of consensual sexual relationships with staff. We believe these issues can be resolved and will work with those concerned to do so.

In sum, we wish to thank you for your willingness to author the Vulnerable Adult Act amendments which we believe will improve the protection system for vulnerable adults within our state.

Very truly yours,

MINNESOTA DISABILITY LAW CENTER



Anne L. Henry  
Attorney at Law

ALH:nb

bcc: Iris Freeman

# MACSSA 1995 LEGISLATIVE POSITION

## TOPIC/DESCRIPTIVE TITLE:

Vulnerable Adult Reform Initiative Act

## BRIEF SUMMARY STATEMENT:

In 1980 the legislature enacted the Vulnerable Adult Act (VAA) "to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to abuse or neglect". Since the VAA was enacted, many professionals and the individuals in need of its protections, have recognized the need to revise the current law.

## PROBLEM/ISSUE STATEMENT:

The current VAA Legislation is thought to be vague in its definitions, have a confusing reporting structure, duplicative investigation mandate and inconsistent consequences.

The core reform principles of the VAA reform initiative are reflected in four key areas of the bill:

- **Definition** The new definitions clarify key terms in the law such as abuse, neglect, financial exploitation, accident and therapeutic conduct. This clarity will help eliminate current confusion over what to report and how to respond.
- **Reporting and Initial Response** The VAA is streamlined by allowing reporters to call one place which will dispatch the information to the agency best suited for response.
- **Investigations** The bill designates one lead investigative agency, eliminates current duplication, imposes timelines for response and includes a clear appeal route to ensure due process.
- **Consequences** The bill includes a range of consequences for perpetrators to fairly reflect the circumstances of the event and the gravity of harm. Consequences range from training requirements, to disqualification from employment with vulnerable adults, to the rare case, criminal prosecution.

## LEGISLATIVE COMMITTEE ACTION PROPOSED:

MACSSA supports the passage of this critical legislation with reservation regarding the fair hearing process and fiscal implications for counties.

## IMPACT IF CHANGE NOT ENACTED:

The counties will continue to apply obsolete statutes to the vulnerable adult reports, which the counties now have a responsibility to respond to.

## AFFECTED STATUTE(S):

Minnesota Statute 626.557.

Adopted 1-26-95



American Association  
of Retired Persons

# Minnesota State Legislative Committee

## 1995 Position Paper

### STRENGTHEN THE VULNERABLE ADULTS ACT

**POSITION:** The Minnesota State Legislative Committee of the American Association of Retired Persons (AARP) supports proposed changes in the Vulnerable Adults Act concerning reporting of maltreatment of Vulnerable adults.

**PROBLEM:** The Vulnerable Adult Act of 1990 has been found weak in the following areas:

- Imprecise definition of terms
- Overlapping responsibilities among agencies lead to inaction
- Lack of standardized levels of evidence hampers investigators
- No single, uniform data collection at various entry points exists. no data analysis for planning is conducted
- Penalties are insufficient and seldom invoked
- No training/education for various professionals dealing with aspects of the law has been provided
- No provision is made for protecting reporters of abuse/maltreatment

**SOLUTION:** The AARP State Legislative Committee shall cooperate with the office of the Attorney General to secure favorable action on proposed amendments to the Vulnerable Adults Act, M.S.626.557.

**CONTACT:** For more information:

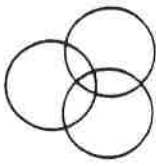
Mrs. Audrey G. Eickhof  
RR 2 Box 17  
Crookston, MN 56716-9603  
(218) 281-4636

Mr. Francis Johnston  
8109 North 46 1/2 Avenue  
New Hope, MN 55428  
(612) 537-2440

Dr. Ross Dewitt  
1046 West Lake Avenue  
Worthington, MN 561878-3002  
(507) 376-6225

October, 1994





STATE OF MINNESOTA  
**OFFICE OF THE OMBUDSMAN FOR  
MENTAL HEALTH AND MENTAL RETARDATION**

Suite 202, Metro Square Building, St. Paul, MN 55101

612-296-3848 or Toll Free 1-800-657-3506

February 8, 1995

Dear Members of the Minnesota Legislature,

The Office of Ombudsman for Mental Health and Mental Retardation is charged under Minnesota Stat. § 245.92 with promoting the highest attainable standards of treatment, competence, efficiency, and justice for persons receiving services or treatment for mental illness, mental retardation or a related condition, chemical dependency, or emotional disturbance.

I have had the unique privilege of serving on the Vulnerable Adult Act Working Group over the past 2 years, in an effort to revise the current Vulnerable Adult Act. The original act was a significant piece of legislation for Minnesota and it's most vulnerable and easily victimized adult citizens. After working with the law for a number of years, members of the system that were affected by the law, saw a need for creating a more responsive, efficient and fair system.

The bill is a result of two years of intensive work and thousand of hours of work by hundreds of individuals on system reform led by a working group representing many individuals and organizations interested in and affected by the law. Extensive work went into the analysis of the problems and the development of proposed solutions.

I have been impressed by the dedication and reasonableness of all of the participants regardless of their special interest. This effort has truly been unique and historic. While there will always be aspects of the bill that perhaps I would have written differently from my perspective, the end product is a result of collaboration and compromise that reflects the various interests. The value of the reform and revamping override any single item of concern. It serves the core mission well which was to create the best possible system that protects vulnerable adults.

I am please to support the introduction of this bill. I look forward to participation in the process as this bill proceeds.

Sincerely,

Roberta Opheim  
Ombudsman



an equal opportunity employer

# **APPENDIX D**

May 22, 1995

VULNERABLE ADULTS ACT REFORM PROPOSAL  
Legislative Pathway

SENATE

Crime Prevention Committee (2/27, 3/2, 3/9)

Data Practices Committee (3/15)

Judiciary Committee (3/20)

Health Care Committee (3/23)

Health and Family Services Finance Division (3/29)

Health Care Committee again (3/29)

Full Senate Finance (4/29)

Senate Floor (5/4)

Conference Committee (5/18)

Report Adopted and Final Passage (5/19)

HOUSE OF REPRESENTATIVES

Health and Human Services Committee (3/14)

Data Privacy Subcommittee (4/4)

Judiciary Committee (4/5)

Human Services Finance Division (4/10)

Health and Human Services Committee again (4/18)

Ways and Means Committee (5/5)

House Floor (5/16)

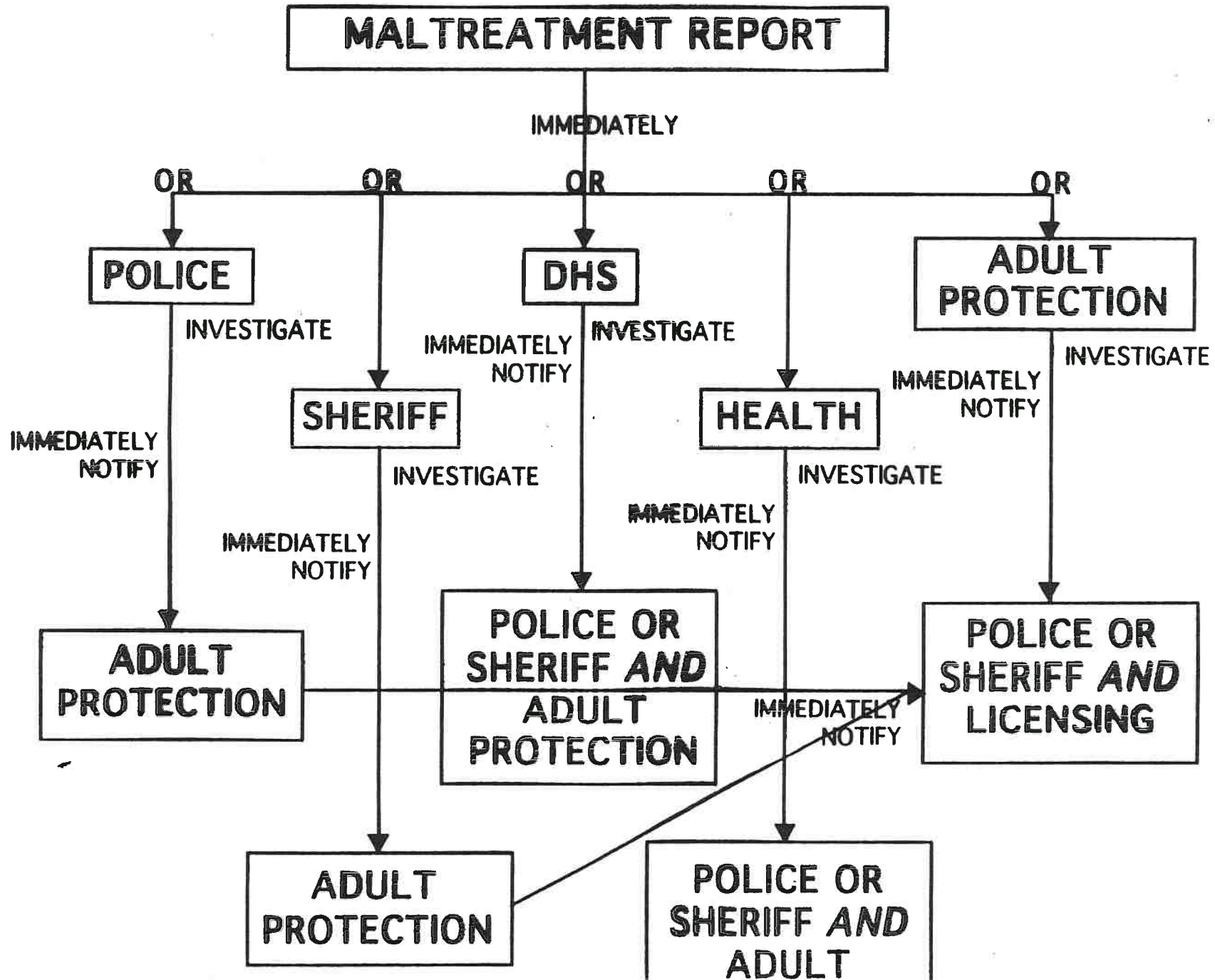
Conference Committee (5/18)

Report Adopted and Final Passage (5/22)

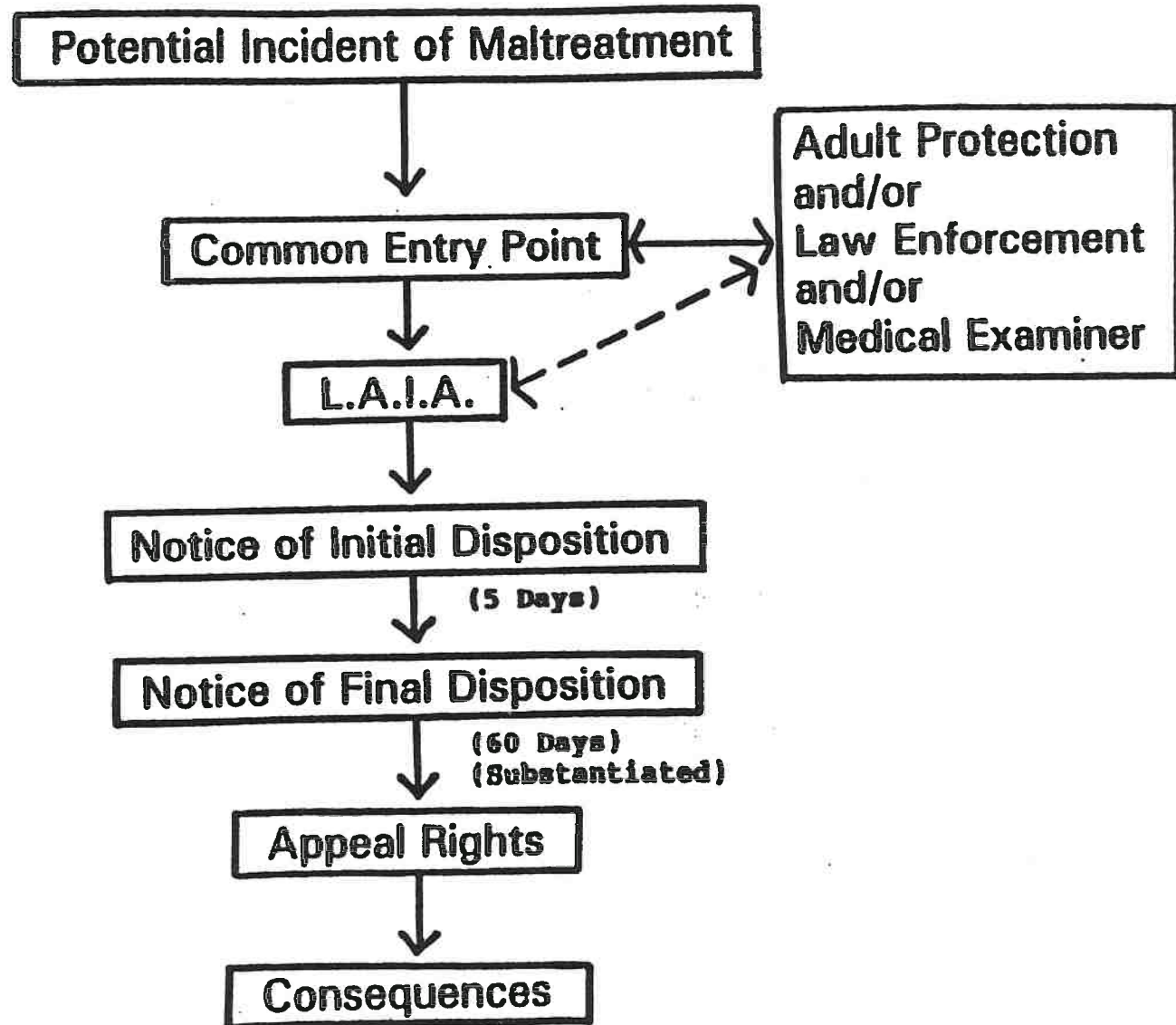
GOVERNOR'S SIGNATURE

# **APPENDIX E**

# OLD VAA SYSTEM



# VAA SYSTEM FLOW CHART



# REPORT FLOW CHART

