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WHILE FEDERAL LAWMAKERS TRY, STATES FILL ELDER JUSTICE GAPS

By DANIEL KOEN

While the federal government continues to try to enact comprehensive legislation, state legislatures and coalitions continue to piece together a patchwork of programs to assist victims of elder abuse, a crime which often goes unnoticed and unreported.

Elder abuse claims between 500,000 and 5 million victims each year, according to the best estimates.¹ The problem, however, is that these best estimates are generally based on limited research and incomplete surveillance, which in turn, leads to a lack of public knowledge about the seriousness of the problem.²

“The problem of elder abuse, neglect and exploitation has long been invisible and is probably one of the most serious issues facing seniors and their families,” said Sen. Orrin Hatch (R-UT).³

“People generally aren’t aware,” said Lori Stiegel, Associate Staff Director of the American Bar Association (ABA) Commission on Law and Aging, a partner of the National Center on Elder Abuse (NCEA). “They say, ‘oh no, elder abuse doesn’t really happen.’”⁴

But it does happen—and in a variety of ways, including caregiver neglect, physical and psychological abuse, financial exploitation, and sexual abuse.⁵ According to the NCEA, two out of three victims are women, and more than half of the abusers are the children or other family members of the victim.⁶

Rep. Jan Schakowsky (D-IL) says comprehensive national legislation is needed because there is a little bit of an “ostrich mentality” that the public does not have to confront the issue if elder abuse is not reported. Seniors, too, sometimes are uncomfortable in reporting if they are abused or scammed, according to Schakowsky, who learned firsthand of the needs of the elderly as a former executive of the Illinois Council of Senior Citizens.⁷

To address the problems in a comprehensive fashion requires a multi-disciplinary approach, said the ABA’s Stiegel. “Law enforcement, social services, reports to the attorney general—when everyone works together, that’s definitely the best situation.”

This year, Schakowsky, the NCEA, the ABA and a broad spectrum of elder advocates put their efforts behind the Elder Justice Act of 2006 (EJA).⁸ The EJA was “designed to create a national infrastructure to support detection, prevention, prosecution and victim assistance.”⁹ Provisions within the EJA included the establishment of an Office of Elder Justice within the Department of Health and Human Services; resources to increase coordination of national, state and local elder justice programs; and new funding to create a national clearinghouse of research and best practices.¹⁰

Hatch, who introduced the EJA in the Senate, said “few pressing social issues have been as systematically ignored as elder abuse.”¹¹ The American Association of Retired Persons (AARP) said the EJA “marks the opening of new hori-

zons in detecting, combating and preventing elder abuse, neglect and exploitation.”¹²

“Every older person has the right to be free of abuse, neglect and exploitation,” said Hatch. “Too many of our seniors suffer needlessly.”¹³

However, despite broad bipartisan support, the EJA failed to make it to a vote on either the House or Senate floors before the 109th Congress adjourned in late September 2006. Similar legislation failed in the same manner in 108th and 107th Congresses, and aides to Schakowsky and Hatch say its chances of seeing action after the November elections and before the start of the 110th Congress are slim.

The AARP declined to speculate on why Congress has been unable to pass federal legislation.¹⁴

WHERE THE STATES COME IN

The U.S. Administration on Aging reports that all 50 states have some form of elder abuse protections, but they vary in type and scope.¹⁵ Some states have had programs for years, while others enact laws on an as-needed basis. The pro bono community also helps fill in the gaps between the laws and programs available to seniors.

“We’re seeing more complex issues involving elder abuse and consumer fraud than ever before,” said Jann Dragovich-Stulberg, executive director of the Pro Bono Center for Disability and Elder Law (Pro Bono CDEL) in Chicago, a legal services organization that uses a network of more than 1,100 volunteer attorneys, paralegals and law students to provide low-income elderly and persons with disabilities with pro bono legal services.¹⁶

One of the newest pieces of legislation can be found in Alaska, where a new law¹⁷ establishes the state’s first Office of Elder Fraud and Abuse (OEFA) that is charged with working with local, state and national officials to help protect the elderly from fraud. The law provides investigative assistance to elderly victims of fraud, and directs the state Office of Public Advocacy to bring civil enforcement action when necessary.¹⁸

The law requires the (OEFA) to “investigate complaints involving fraud committed against older Alaskans who are not otherwise able to bring a complaint without assistance.” The OEFA is supposed to “provide information, referrals, and other assistance to older Alaskans who are victims of fraud.”¹⁹ The law also provides the OEFA with a wide range of new authority ranging from the issuance of subpoenas to investigative authority of business records and transactions associated with alleged fraud as well as the authority to enter into contracts with outside counsel when necessary.²⁰

Alaska Representative Mike Chenault said he brought the legislation because one of his elderly constituents was literally bilked out of “millions of dollars of property,” and “existing resources [to protect her] were practically non-existent.”²¹ During the debate over the legislation, Chenault said his staff spoke to a “scammer” who claimed the state could “never protect everyone from being cheated.”²² After signing the bill in June, Governor Frank Murkowski said he hopes the legislation will not only deter scammers, but provide victims “a new avenue to seek justice.”²³

State legislation provides avenues for elder justice, but communities also need to be aware of elder abuse and educated about the options legislation affords them in order for more instances of abuse to be reported. The Illinois Secretary of State’s Office recently launched a statewide series of seminars in September for librarians, law enforcement officials and senior advocates to teach them how they can help elderly victims of violent crime apply for resources under the state’s Crime Victim’s Compensation Act (CVCA),²⁴ which has existed since 1973.

Despite reported cases of elder abuse in Illinois increasing from 5,268 to 8,584 from 1996 to 2005,²⁵ there have only been a few applications for compensation services under the CVCA. Only 88 applications for compensation were filed by elderly persons age 65 years and older from July 2005 thru June 2006. From July 2002 to June 2003, the number was only 68.²⁶ However, it is likely that many more qualify for coverage under the CVCA. In order to qualify, victims of crime who do not have adequate health insurance coverage can receive compensation for their medical bills, counseling, lost wages and other expenses,²⁷ which is often the case when the elderly are victimized.

The seminars directly address one of the CVCA’s key goals: “Encourage public use of the services made available under this Act.”²⁸ Five seminars already have

been conducted, at least three more are scheduled, and requests may continue the program through the spring.²⁹

“Programs like these are very important tools because they increase public awareness,” said Pro Bono CDEL’s Dragovich-Stulberg.³⁰

Although Pro Bono CDEL does not assist with criminal cases, Dragovich-Stulberg is well-aware of the CVCA and lauded the program’s ability to help elderly victims of abuse. “Every police station and hospital in the state should have information [on the CVCA] to provide to the elderly,” she said.

“I wasn’t even aware the Crime Victim’s Compensation Act existed before I took a seminar,” said Robin Krone, library administrator of the Prairie Skies Library District, a mostly rural area serving 7,000 residents, many of whom are elderly.³¹

Even though Krone says her small town is one where “everyone knows what is happening to everyone,” the seminar opened her eyes to learning what elder abuse is and what resources the state can offer victims. “Now if a patron comes to me, I know what information and resources there are that can help someone. I’m going to try to get all the librarians I know to go to a seminar.”

“It is a big step in getting these victims back to living their regular lives,” said Illinois Secretary of State Jesse White.³²

Even while states like Alaska and Illinois take steps to protect the elderly, Congress may not be finished. Aides to Congressman Rahm Emanuel (D-IL), one of the Elder Justice Act’s original sponsors in the House, said that Emanuel plans to reintroduce the Act in the 110th Congress.³³

NOTES

1 Statement of Sen. Orrin Hatch, 151 Cong. Rec. S 12840, 12847 (2005).

2 *Id.*

3 *Id.*

4 Telephone interview with Lori Stiegel, Associate Staff Director of the ABA Commission on Law and Aging, in Chicago, Ill. (Sept. 26, 2006).

5 National Center on Elder Abuse, *Fact Sheet: Elder Abuse Prevalence and Incidence* (2005), <http://www.elderabusecenter.org/pdf/publication/FinalStatistics050331.pdf>.

- 6 National Center on Elder Abuse, *Fact Sheet: 2004 Survey of Adult Protective Services* (2004), <http://www.elderabusecenter.org/pdf/2-14-06%20FINAL%2060+REPORT.pdf>.
- 7 Interview by Cathy Hurwit with U.S. Rep. Jan Schakowsky, United States Congress, in Washington, D.C. (September 27, 2006).
- 8 Elder Justice Act (EJA) of 2006, H.R. 4993, 109th Cong. (2006).
- 9 Statement *supra*, note 1.
- 10 Elder Justice Act of 2006, S. 2010, 109th Cong. (2005).
- 11 Statement, *supra*, note 1, at 12847.
- 12 Press Release, AARP, AARP Supports Elder Justice Act 2005 (Dec. 15, 2005), http://www.aarp.org/research/press-center/presscurrentnews/elder_justice_act_2005.html.
- 13 Statement, *supra*, note 1 at 12848.
- 14 Telephone interview with AARP media affairs office, Chicago, Ill. (Oct. 1, 2006).
- 15 U.S. Department of Health and Human Services Administration on Aging, *Elder Abuse Prevention*, <http://www.aoa.gov/press/fact/pdf/Elder%20Abuse%20Prevention.pdf> (last visited October 6, 2006).
- 16 Telephone interview with Jann Dragovich-Stulberg, executive director Pro Bono Center for Disability and Elder Law, in Chicago, Ill. (Oct. 5, 2006).
- 17 2006 Alaska Sess. Laws 64.
- 18 National Center on Elder Abuse, *National Center on Elder Abuse Newsletter*, Aug. 2006, <http://www.elderabusecenter.org/enews/nceaenews060831.cfm>.
- 19 2006 Alaska Sess., *supra*, note 17.
- 20 *Id.*
- 21 E-mail from Mike Chenault, Alaska State Representative, to Daniel Koen (Sept. 23, 2006, 15:09 CST) (on file with author).
- 22 Press Release, Alaska State Rep. Mike Chenault, *Elder Abuse Bill Passes House State Affairs* (Feb. 10, 2006).
- 23 National Center on Elder Abuse, *supra* note 18.
- 24 740 Ill. Comp. Stat. 45 (2006)
- 25 Illinois Department of Aging, *FY 2004 Elder Abuse and Neglect Program Annual Report*, http://www.cbrx.il.gov/aging/1abuselegal/break_the_silence/Charts/number_of_reports.pdf (last visited October 5, 2006); Illinois Department on Aging, *Population Over Age 60 and Elder Abuse Reports by County: FY 2005 Data*.
- 26 Illinois Department on Aging, Office of Attorney General Lisa Madigan Crime Victim Services Division, Crime Victim Compensation Program, *Number of Filed Compensation Applications by Age Group*. Charts obtained from the Office of Illinois Attorney General Lisa Madigan. (Oct. 5, 2006).
- 27 740 Ill. Comp. Stat. 45/10.1 (2006).
- 28 725 Ill. Comp. Stat. 240/2 (2006).
- 29 E-mail from press office of Illinois Secretary of State Jesse White (Oct. 4, 2006, 18:23 CST) (on file with author).
- 30 Telephone interview with Dragovich-Stulberg, *supra* note 16.
- 31 Telephone interview with Robin Krone, Library Administrator, Prairie Skies Library District in Chicago, Ill. (Oct. 3, 2006).
- 32 Press Release, Illinois Secretary of State Jesse White, *Illinois Secretary of State Jesse White Announces Assistance for Elderly Victims of Violence Program* (Sept. 27, 2006).
- 33 Telephone interview with Emmanuel Press Secretary and Legislative Aide, Chicago, Ill. (Oct. 10, 2006).