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GOVERNOR

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DEPARTMENT OF HUMAN SERVICES
BUREAU OF ELDER AND ADULT SERVICES
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December 4, 1996

Senator John Benoit
P.O. Box 890
Rangeley, ME 04970

Representative Herbert E. Clark
180 Bowdoin Street
Millinocket, ME 04462

Re: Final Report of Department of Human Services Study Group on
Prosecution of Crimes Against the Elderly

Dear Senator Benoit and Representative Clark:

I am pleased to provide you with the enclosed report of the Study Group on
Prosecution of Crime Against the Elderly.

During the last legislative session, the Joint Standing Committee on Criminal
Justice reported out an amendment to the Governor's long term care bill which directed
the Department to convene a study group to identify barriers to prosecution of crimes
against the elderly and to propose recommendations for improving the system. The
Department did convene this group, which met five times during the summer and fall and
held two public hearings. The members recruited for this effort, including representatives
of local law enforcement, prosecutors' offices, the Attorney General's office and our own
adult protective services program, were a most vocal group who approached this project
with dedication and enthusiasm. We also received some very helpful comments from
members of the public and from law enforcement and social service agencies which were
incorporated into the final report.

The study group also developed proposed legislation, "An Act to Implement the
Recommendations of the Department of Human Services Study Group on Prosecution of
Crimes Against the Elderly," which will be introduced in the upcoming session.

Members of the study group will continue to meet in the coming months to
develop training programs for law enforcement, prosecutors and adult protective services
and to raise public awareness on elder abuse, neglect and exploitation.



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MAY 28 1997

I will be glad to answer questions from your committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christine Gianopoulos', with a long horizontal flourish extending to the right.

Christine Gianopoulos
Director, Bureau of Elder and Adult Services

Encl.

cc: Commissioner Kevin Concannon, Department of Human Services
Members, Study Group on Prosecution of Crimes Against the Elderly



**Maine Department of Human Services
Study Group on Prosecution of
Crimes Against the Elderly**

**Final Report to Maine Legislature,
Joint Standing Committee on Criminal Justice**

Final Report
December 4, 1996

Study Group Members:

Michael P. Cantara	District Attorney, York County
Owen Colomb	Investigator, Medicaid Fraud Control Unit
Carmen Coulombe, Esq.	Assistant Attorney General, Health and Institutional Services Division
Major Everett Flannery	Kennebec County Sheriff's Office
Christine Gianopoulos	Director, Bureau of Elder and Adult Services, Maine Department of Human Services
Ricker Hamilton	Protective Program Administrator, Bureau of Elder and Adult Services, Maine Department of Human Services
Rep. Michael McAlevey	Joint Standing Committee on Criminal Justice
Donald Macomber, Esq.	Assistant Attorney General, Criminal Division
Patricia A. Nelson-Reade, Esq.	Chair, Elder Law Section, Maine State Bar Association

Committee Staff:

Sally M. Wagley, Esq.	Legal Services Consultant Bureau of Elder and Adult Services Maine Department of Human Services
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Consultant:

Marion Hylan Barr, Esq.	Legislative Analyst to Joint Standing Committee on Criminal Justice Office of Policy and Legal Analysis
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**Maine Department of Human Services
Study Group on Prosecution of
Crimes Against the Elderly**

**Final Report to Maine Legislature,
Joint Standing Committee on Criminal Justice
(December 4, 1996)**

Executive Summary

On April 11, 1996, Governor King signed into law P.L. 1995, Chapter 696, "An Act to Promote Choice and Quality in Long Term Care." Section C-1 of the public law directed the Department of Human Services to convene a "Study Group on Prosecution of Crimes Against the Elderly." The Study Group was directed to do the following: 1) review Department of Human Services case histories of reported crimes against the elderly; 2) identify barriers to successful prosecution of crimes against the elderly, including a review of the criminal code; 3) submit a report to the Joint Standing Committee having jurisdiction over criminal justice matters by November 1, 1996.

The Study Group found that the following barriers exist to investigation and prosecution of crimes against the elderly:

1. Elder abuse, neglect and exploitation are under-reported to law enforcement and adult protective services, and victims are often reluctant to bring charges.
2. Law enforcement and prosecutors are not adequately trained regarding elder abuse, neglect and exploitation.
3. Law enforcement, prosecutors and adult protective services lack the opportunity to develop effective working relationships.
4. Public agencies' capacity to respond to crimes against the elderly is limited.
5. There are inadequate safeguards to protect the elderly against financial exploitation by people acting in a fiduciary capacity.
6. Crimes against the elderly often involve multiple jurisdictions, presenting special challenges for law enforcement agencies.
7. There are barriers to the use of the legal process by older people.
8. Data on crime against the elderly are incomplete or nonexistent.

The Study Group recommends the following action steps:

1. Raise awareness of elder abuse, neglect and exploitation through efforts by public-private partnerships, spearheaded by the Department of Human Services.
2. Develop and implement training programs for law enforcement, prosecutors and adult protective services workers, through collaboration between the Department of Human Services, the Maine Criminal Justice Academy, the Office of Attorney General and the statewide associations of police, sheriffs and prosecutors.
3. Create opportunities for ongoing communication between law enforcement, prosecutors and adult protective services and for the development of effective working relationships.
4. Increase the capacity of public agencies to respond to crimes against the elderly.
5. Enact statutory and regulatory changes governing fiduciary arrangements, including durable powers of attorney, joint bank accounts, and conservatorship, in order to prevent financial exploitation.
6. Encourage banks and credit unions to develop strategies for preventing financial exploitation, in cooperation with the Department of Human Services and law enforcement.
7. Develop mechanisms for gathering accurate and meaningful information on crime against the elderly.
8. Identify funding mechanisms for the enhancement of public agencies' ability to address elder abuse.

The Study Group developed proposed legislation, "An Act to Implement the Recommendations of the Department of Human Services Study Group on Prosecution of Crimes Against the Elderly," which will be introduced in the upcoming legislative session.

**Maine Department of Human Services
Study Group on Prosecution of
Crimes Against the Elderly**

**Final Report to Maine Legislature,
Joint Standing Committee on Criminal Justice
(December 4, 1996)**

Introduction

On April 11, 1996, Governor King signed into law P.L. 1995, Chapter 696, "An Act to Promote Choice and Quality in Long Term Care." Section C-1 of the public law directed the Department of Human Services to convene a "Study Group on Prosecution of Crimes Against the Elderly." The Study Group was directed to do the following:

- 1) review Department of Human Services case histories of reported crimes against the elderly;
- 2) identify barriers to successful prosecution of crimes against the elderly, including a review of the criminal code;
- 3) submit a report to the Joint Standing Committee having jurisdiction over criminal justice matters by November 1, 1996.

The study group met five times. In its deliberations, the group did the following:

- 1) reviewed data on elder abuse, neglect and exploitation from the Department of Human Services and the Office of Attorney General's Medicaid Fraud Control Unit;
- 2) discussed cases handled by the different agencies represented on the study group (attached to this report as Appendix A);
- 3) discussed the causes and dynamics in elder abuse cases and barriers to investigation and prosecution;
- 4) identified the components of the social services and law enforcement systems charged with responding to crimes against elders;
- 5) explored funding opportunities for developing greater capacity in Maine for addressing elder abuse;
- 6) heard a report from Major Everett Flannery of the Kennebec County Sheriff's Office regarding that office's "Triad" program of outreach to senior citizens;
- 7) heard a presentation from John Scheft of the Massachusetts Attorney General's office regarding that state's program of state-wide training of law enforcement and adult protective services on elder abuse issues, its bank reporting project designed to address financial exploitation of the elderly, and its revised criminal provisions pertaining to elder abuse;
- 8) reviewed other states' law enforcement training curricula on elder abuse;
- 9) met with Steven Giorgetti, Director of the Maine Criminal Justice Academy, to discuss the development of training on elder abuse;
- 10) reviewed Maine's Criminal Code and assessed its adequacy with respect to prosecution of crimes against the elderly;
- 11) compared Maine's criminal code to the codes of ten other states, which have special statutory provisions pertaining to crimes against elders;
- 12) reviewed Maine laws on fiduciary issues, including laws on durable powers of attorney, guardianship, conservatorship and joint bank accounts, and assessed the adequacy of these laws to prevent or address financial exploitation of elderly people;
- 13) reviewed Maine's Adult Protective Services Act and assessed its adequacy for preventing and addressing crimes against the elderly.

The study group also submitted applications for grants from the federal government to develop effective state and local responses to elder abuse, specifically: 1) an application submitted on behalf of the York County District Attorney's Office for a "Problem-Solving Partnership Grant" from the Department of Justice's Office of Community Oriented Policing to gather information on crimes against the elderly in York County and identify barriers to reporting, investigation and prosecution; 2) an application to the federal Administration on Aging for funds to develop and implement regionally based interdisciplinary training for law enforcement, prosecutors, victim-witness advocates, and adult protective services.

The study group circulated its draft report, for comment, to over 220 agencies and individuals. These agencies and individuals included: the State's elected district attorneys; chiefs of police; sheriffs; judges from the probate, district and superior courts; the Chief Justice of the Maine Supreme Judicial Court; representatives of the Maine chapter of the American Association of Retired Persons (AARP); Maine's area agencies on aging; elder service and health care providers; Legal Services for the Elderly; the private bar; representatives of the banking and financial services industry; and legislators on the criminal justice, judiciary and human resources committees. In addition, two public hearings were advertised and held, in Bangor and Portland, for the purpose of receiving comments. Comments were received from the Maine Chapter of AARP, Maine's Chief Justice, the Maine Probate Judges Assembly, the Eastern Agency on Aging, Legal Services for the Elderly, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Wells Police Department, the Maine Criminal Justice Academy, the Maine Association of Chiefs of Police, and individual members of the public. The public comments are summarized in Appendix C to this report.

Finally, the study group developed proposed legislation, "An Act to Implement the Recommendations of the Department of Human Services Study Group on Prosecution of Crimes Against the Elderly," which will be introduced in the upcoming legislative session.

Components of System for Addressing Crimes Against the Elderly

Department of Human Services' Adult Protective Services Program

The Department of Human Services, Bureau of Elder and Adult Services, is mandated under Maine Revised Statutes Annotated, Title 22, Chapter 758-A, to provide adult protective services to dependent and incapacitated adults who are at substantial risk of abuse, neglect or exploitation. Approximately 70 percent of the clients referred to the adult protective services program are over the age of 60.

Maine's mandatory reporting law, Title 22, Section 3477, requires that health care providers, social workers, psychologists, and law enforcement officers report suspected occurrences of abuse, neglect and exploitation of incapacitated and dependent adults to the adult protective services program. An optional reporting law, Title 22, Sections, 3479, 3479-A, allows others, outside the mandated categories, to make reports. The law provides immunity from criminal and civil liability to all who make such reports in good faith. Data maintained by the Department of Human Services indicate that reports of abuse, neglect and exploitation come primarily from providers of elder services (50 percent) and providers of health care (18 percent). Elder and adult victims make only one percent of the reports. Law enforcement make approximately four percent of the reports. Other reporters include private attorneys, relatives, banks, businesses, friends and neighbors.

The Department of Human Services' adult protective services program investigates the reports. If abuse, neglect or exploitation is substantiated, the Department offers to provide or arrange for the services to protect the client, which may include social, medical, psychiatric and residential services. Clients who have the mental capacity to make their own decisions are entitled to refuse services. For clients who are deemed to lack capacity, a guardianship or conservatorship study is undertaken pursuant to Title 22, Section 3482. If an evaluation by a physician or licensed clinical psychologist confirms that the client lacks capacity, then the Department seeks to be appointed by the Probate Court as the client's guardian or conservator. If appointed, the Department makes the decisions necessary to protect the client, including consent to medical treatment, arrangement of in-home services, hospitalization, placement in a nursing, boarding or adult family care home, and management of finances.

Statewide, the adult protective services program employs 52 caseworkers, eight casework supervisors, three protective program administrators, and three clerical staff. These staff work out of 12 offices, located in Biddeford, Portland, Lewiston, Augusta, Rockland, Bangor, Ellsworth, Machias, Calais, Houlton, Caribou, and Fort Kent.

It should be noted that a separate state program of adult protective services for individuals who are mentally retarded is administered by the Department of Mental Health, Mental Retardation and Substance Abuse Services. It should also be noted that younger people with mental disabilities (including people who suffer from mental illness, mental retardation and head injury) are vulnerable in many of the same ways as older people. While this Study Group did not focus on the younger age group, many of the findings and recommendations in this report are also applicable to incapacitated and dependent adults of all ages. The problems experienced in the criminal justice system by people with mental illness, mental retardation and other mental disabilities which are distinct from those problems faced by the elderly could be the subject of future inquiry.

Law Enforcement and District Attorneys

Under Title 22, Section 3485, the Department of Human Services must report to the district attorney or law enforcement agency those cases in which abuse or neglect resulted in serious harm or in which exploitation occurred. In 1988, the Department and the eight elected district attorneys in the state signed memoranda of understanding setting forth protocols for making these reports. Data from past years indicate that the Department makes approximately 40 such reports to district attorneys per year. (There are no data on referrals to law enforcement as, prior to 1995, the law only required reports to district attorneys.) The cases reported were about evenly divided between criminal activity against vulnerable adults in the community and criminal activity against the same population in health care or residential facilities.

There is no information on what action was taken by district attorneys subsequent to the referrals from the Department of Human Services. Nor is there any information from district attorneys' offices on the numbers of prosecutions of crimes against elderly victims.

Nor are there data on the numbers of crimes against older people handled by the local law enforcement agencies and prosecutors in Maine. Uniform Crime Reports do not break down the data according to the age of the victim. This will soon change, as Maine's Department of Public Safety has chosen to adopt the new federal reporting system, the National Incident-Based Reporting System (NIBRS), which will collect these data.

Office of Attorney General

Two divisions of Maine's Office of Attorney General, the Medicaid Fraud Control Unit and the Public Protection Unit, are responsible for responding to crimes against the elderly, frequently working in conjunction with local law enforcement and prosecutors.

The Medicaid Fraud Control Unit is mandated by federal law to investigate abuse, neglect and exploitation of patients in health care facilities receiving Medicaid payments. See 42 C.F.R. Section 1002.301 et seq. The Unit has been advised by the U.S. Department of Health and Human Services, from which it receives funding, that its activities must be restricted to investigation and prosecution of staff-to-resident abuse and that it may not use federal funds to address abuse, neglect and exploitation by others, including family members. The Unit receives approximately 120 referrals per year from the Department of Human Services adult protective and licensing divisions and from health care providers. In the last three years, the Unit has opened 26 cases. Of these, 17 have resulted in convictions, three ended in acquittals, and six were closed without action. The Unit is staffed by one prosecutor and three investigators.

The Public Protection Unit has played a key role in prosecuting perpetrators of scams against the elderly. These cases, which have included civil actions as well as criminal prosecutions, have targeted unfair and deceptive trade practices involving paving contractors, telemarketers, and fraudulent sales of living trusts. The Public Protection Unit also operates a Consumer Mediation Service, staffed by volunteer mediators, which attempts to facilitate voluntary resolution of disputes between consumers and merchants. Staff of the Consumer Mediation Service identified several categories of complaints that are generally made by older people: paving contractors, direct mail, games of chance, finance schemes, pyramid chains, work at home, funeral services, and water filtering systems. This year there have been a total of 432 complaints of these types.

Department of Human Services' Licensing and Certification Division

The Department of Human Services, Division of Licensing and Certification, is mandated to investigate reports of abuse, neglect and exploitation in health care settings, including nursing facilities, residential care settings, hospitals, and home health agencies. The Licensing Division is also required under federal and state law to maintain a registry of all certified nurses' assistants (CNA's) working in the State. The Division must record in its Registry information on those CNA's who have abused, neglected or misappropriated property of an individual, based either on a substantiated finding by the Licensing Division or on a criminal conviction. Federal law bars nursing facilities and home health agencies from employing CNA's who have been found by the Licensing Division to have committed abuse, neglect or misappropriation of fund in a health care settings.

Courts

The courts play a pivotal role in addressing criminal and other wrongful activity against older people. The District and Superior Courts are the forums in which criminal cases are prosecuted, and also have jurisdiction over civil matters involving older people.

In addition, the State's 16 county Probate Courts, which have jurisdiction over guardianship and conservatorship of incapacitated adults, play a role in preventing and redressing wrongful activity against this population. A guardian is a person appointed by the court to make personal and medical decisions for an incapacitated person, and a conservator is a person appointed by the court to make financial decisions for the person. The appointment of a responsible guardian or conservator can be a way to assist and protect an incapacitated elderly person. At the same time, guardianship or conservatorship can also be a means for an unscrupulous person to take advantage of an elderly ward. The Probate Court has the authority to decide whether to appoint a guardian or conservator, who the guardian or conservator will be, what powers the guardian or conservator will have, and how the guardian or conservator will be held accountable.

Causes of Crime Against the Elderly

The Study Group spent a considerable amount of time discussing the causes of crimes against the elderly. Members agreed that older people are more vulnerable to criminal activity due to the greater incidence of mental and physical impairment, social isolation, accumulation of assets, less sophistication as to law and legal rights, and dependence on others for care. These same factors make the elderly less likely to report crimes.

Older people who need help from others with activities of daily living are more likely to enter into arrangements which make them vulnerable to abuse, neglect and exploitation. These arrangements include acceptance of care from unqualified or unscrupulous caregivers, reliance on sometimes overburdened family members, making large gifts of property in exchange for care, and entering into often unsupervised legal arrangements for the management of finances, including durable powers of attorney, joint bank accounts, guardianship, conservatorship and representative payeeship. Some of the laws and regulations governing payment for long term care services may encourage relatives to exploit older people under the guise of estate planning. Data from the Department of Human Services' adult protective services program from 1993 and 1994 show approximately 73 reports of financial exploitation of a dependent or incapacitated adult per year. The Legal Hotline operated by Legal Services for the Elderly, Inc., a federally and state funded nonprofit organization which provides free legal assistance to people 60 and older, received 53 complaints concerning financial exploitation during the first three quarters of this year.

Older people also tend to be more vulnerable to consumer fraud than other age groups. In Maine, this includes scams by telemarketers, driveway pavers, lawn maintenance services and purveyors of living trusts, who may extract exorbitant sums from unsuspecting individuals and providing little or nothing in return. An even more disturbing pattern of conduct has been identified in southern Maine, in which a team of two or more perpetrators divert a homeowner's attention by offering yard or home maintenance services while another perpetrator burglarizes the house.

Public perceptions of older people as unreliable and prone to exaggeration make it less likely that they will be taken seriously. These perceptions may be held by many members of the community, including police, prosecutors, private attorneys, and even people providing services to older people. This lack of response on the part of the community makes older people even less likely to report crimes and even more vulnerable.

Crimes against the elderly include cases of domestic violence, and many of the same dynamics that exist in domestic violence cases involving younger victims apply with even greater force in the elder abuse situation. This is especially true when the perpetrator is a spouse. Older victims in situations of long-standing abuse are even more immobilized than other victims from taking action in their own defense, including

reporting the abuse. Third parties who are aware of the abuse are often reluctant to act for fear of breaking up a marriage of many years.

The study group acknowledged the "frustrated caregiver" syndrome which may cause family members, exhausted by the responsibility of providing in-home care, to lash out against elders. Members of the group endorsed the availability of supportive and respite services to caregivers in these situations. At the same time, the Study Group recognized parallels between elder abuse and child abuse and concluded that perpetrators should be prosecuted and held accountable for their behavior.

Impact of Crime Against the Elderly

Older people who are victimized tend to become more dependent on others for care and tend to require more from the health care system. The physical and emotional impact on victims and people close to them is immeasurable. There is also a significant monetary impact on the tax-paying public, who pay the cost through a growing Medicaid budget for institutional care. Older people who are financially exploited have the diminished ability to pay for their own care and must rely on public assistance, primarily Medicaid. In just eight cases of financial exploitation handled in the last three years by the Department of Human Services' adult protective program, almost three quarters of a million dollars of older clients' funds were misappropriated: funds which would otherwise have been available to pay for their support and care.

Study Group Findings: Barriers to Effective Investigation and Prosecution

Members of the Study Group were unanimous in their belief that elder abuse, neglect and exploitation is a growing problem, with significant costs to victims and to the community at large; that these cases present special challenges to law enforcement and prosecutors; and that under the current system perpetrators too often go unpunished. Interestingly, the Study Group found the criminal code to be essentially adequate for investigating and prosecuting these cases. The Study Group instead identified the following far more significant barriers to prosecution: underreporting of crimes against elders; inadequate training for law enforcement and prosecutors on elder abuse, neglect and exploitation; inadequate training to adult protective services on collecting and preserving evidence; the lack of effective working relationships between police, prosecutors and adult protective services; the limited capacity of public agencies to respond to crimes against older people; the lack of data on crimes against the elderly in Maine; the lack of safeguards against exploitation in the laws on fiduciary arrangements; problems of venue and jurisdiction where crimes involve multiple jurisdictions; and barriers to the use of the legal process by older people.

1. Elder abuse, neglect and exploitation are under-reported to law enforcement and adult protective services, and victims are often reluctant to bring charges.

- Older victims are reluctant to report and bring charges against perpetrators, due to mental incapacity, pride, embarrassment, or fear of retaliation. Among Maine's Franco-American community, this vulnerability is compounded by the language barrier.
- Crimes against older people frequently involve perpetrators within the family, including spouses as well as adult children and other younger relatives. The same psychosocial dynamics exist in these cases as exist in domestic violence and child abuse contexts. Older people are less likely to report and bring charges against family perpetrators. Similarly, many third parties are reluctant to interfere in the "private family business" of older people who have been abused, neglected and exploited by family members.
- Third parties are also less likely to report crimes against elders than they are to report other types of crime, due to cultural stereotypes of older people.
- Concerned individuals may be reluctant to report crimes against elders because of a perception that "nothing will be done," because of staffing problems, difficulties in investigating and prosecuting these cases, or lack of commitment on the part of responders.
- Many people are not aware of opportunities and requirements to report abuse, neglect and exploitation of incapacitated and dependent adults to the Department of Human Services' adult protective services program.
- Many people, including professionals and workers in health and social services, do not recognize the signs of elder abuse and hence do not report.

2. Law enforcement and prosecutors are not adequately trained regarding elder abuse, neglect and exploitation.

- The Maine Criminal Justice Academy curriculum for new police officers does not include any special training on elder abuse, neglect and exploitation.
- Police officers and detectives may not always recognize elder abuse, neglect and exploitation. Not all are trained to recognize the signs or to communicate effectively with older people who are physically or mentally impaired. In place of aggressive and proactive investigation, there is a tendency on the part of law enforcement to wait for reports: an ineffective response to crimes which are under-reported.

- Police may not understand their role under the adult protective services statutes, particularly their status as mandatory reporters of elder abuse, neglect and exploitation.
- Prosecutors may over-estimate the difficulty involved when an older victim is unable to provide reliable testimony, overlooking the potential usefulness of other types of evidence, such as medical records, expert testimony, excited utterances and statements made for purpose of medical diagnosis and treatment.
- Most prosecutors may not have had training on handling financial exploitation cases, and tend to believe that current Maine law does not enable them to prosecute cases of abuse by fiduciaries under arrangements such as powers of attorney, guardianship, conservatorship, joint bank accounts and representative payeeship .
- Moreover, people who work in the fields of law enforcement, prosecution and adult protective services may carry some of the same biases and attitudes as the public at large, which prevent them from responding effectively to crimes against the elderly.
- The judiciary may not be sufficiently aware of the dynamics and impact of elder abuse, neglect or exploitation.

3. Law enforcement, prosecutors and adult protective services lack the opportunity to develop effective working relationships.

- In making reports to law enforcement and prosecutors, many adult protective services workers do not understand the challenges faced by those agencies or the kinds of information needed to respond effectively.
- Adult protective service workers are not adequately trained on collecting and preserving evidence. The Department of Human Services' licensing and audit divisions would also benefit from training in this area.
- Law enforcement, prosecutors and adult protective services lack opportunities for networking and developing effective working relationships.

4. *Public agencies' capacity to respond to crimes against the elderly is limited.*

- Local law enforcement and prosecutorial agencies are limited in their capacity to develop sufficient expertise on elder abuse, neglect and exploitation, to develop effective responses, to identify statewide trends, and devote adequate time to investigating and prosecuting difficult or complex cases.
- There is consensus among the eight elected district attorneys in Maine that many local district attorneys' offices in this state are understaffed and handle too great a caseload per attorney. This is borne out by an independent study undertaken by the American Prosecutors' Research Institute, to be made available to the Legislature's Judiciary Committee later this year. This situation adversely affects the offices' capacity to handle elder abuse cases at the local level.
- It is well documented that Maine does not have enough judges to handle the volume of cases coming into the system: far fewer, in fact, than the neighboring state of New Hampshire. This causes long delays in processing cases and contributes to the inhospitable environment experienced by elderly litigants and victims of crime.
- Staffing problems in other parts of the justice and corrections system (chiefly, court clerks and probation and parole officers) are likely to stymie efforts to better address crimes against the elderly. For example, statutorily required restitution frequently fails to reach crime victims because of the inadequate numbers of clerks available to process payments. Probation and parole officers, overwhelmed with caseloads averaging 200, are unable to ensure that perpetrators in the community carry out the requirements of their sentences.
- The Investigation Division of the Office of Attorney General, which has been reduced to only three investigators for general investigations, is limited in its ability to support local agencies or to play a lead role in difficult or complex elder abuse cases. The Medicaid Fraud Control Unit can only play a very specialized role in this arena, as it is empowered under federal law to respond only to a limited category of criminal cases against the elderly: staff-to-resident abuse, neglect and exploitation in Medicaid-assisted facilities. The Public Protection Unit has also been reduced, compromising its ability to investigate and prosecute consumer fraud cases. The Consumer Mediation Service, while playing a valuable role in many consumer disputes, does not address cases of criminal fraud and is unable to help when one of the parties will not cooperate.

- The Department of Human Services' Bureau of Elder and Adult Services is also compromised in its ability to do the kinds of investigation needed to make appropriate referrals to law enforcement and district attorneys, as the adult protective service program's supervisory and support staff has been reduced significantly since 1989.
- The Maine Registry of Certified Nursing Assistants maintained by the Department of Human Services' Division of Licensing and Certification excludes information on long term care workers who are not CNA's and does not prevent CNA's who have been annotated in the registry for a substantiated finding of abuse, neglect or exploitation from working in residential care facilities.

5. There are inadequate safeguards to protect the elderly against financial exploitation by people acting in a fiduciary capacity.

- Unsupervised arrangements under which relatives, caregivers and other individuals manage finances and property for older people make them vulnerable to financial exploitation. Some individuals intentionally exploit older people and may repeatedly target a number of old people. Others, particularly relatives, who act as fiduciaries may not be fully aware of their responsibilities, may not see the appropriation of another's property in this situation as criminal and may take advantage of older people without consequence.
- Prosecutors have a difficult time proving "intent" in exploitation cases in which perpetrators act under the cloak of authority of durable powers of attorney, guardianship, conservatorship, representative payeeship, and joint bank accounts.
- Private attorneys sometimes act as unwitting facilitators of financial exploitation by drafting documents and facilitating transfers of property to the detriment of older people. Some private attorneys are not adequately aware of the impropriety of dual representation of an older person and family member. Several of the more egregious cases of financial exploitation seen by the Department of Human Services have involved documents drafted by attorneys.

6. Crimes against the elderly often involve multiple jurisdictions, presenting special challenges for law enforcement agencies.

- Crimes against the elderly frequently involve more than one jurisdiction, crossing county, state and even national borders. This is especially true in consumer fraud cases.

- Perpetrators may target elderly living in different parts of the state, preventing recognition by county and municipal law enforcement or creating confusion as to which agency is responsible.
- Perpetrators may reside or move out of state or even out of the country, making it difficult to prosecute. Extradition of perpetrators may be impractical, given the cost and the class level of the crimes involved.

8. There are barriers to the use of the legal process by older people.

- Frequent delays in court processes present a barrier to effective prosecution, where an older victim may decline physically or mentally or die before the case comes to trial.
- It is difficult for people with sensory deficits to participate fully in court proceedings.
- Some courts are still physically inaccessible to people with disabilities.
- Many older people, deprived of their estates through financial exploitation, lack the resources to hire attorneys to bring civil actions against perpetrators. Legal Services for the Elderly lacks the staff to provide adequate assistance to clients who have been exploited. The small amounts sometimes involved and the difficult issues posed may discourage the private bar from accepting these cases on a contingent fee basis. Moreover, there is a lack of expertise on the part of the private bar on substantive law, remedies, and litigation strategies for handling financial exploitation cases.

9. Data on crime against the elderly are incomplete or nonexistent.

- Agencies and individuals concerned about crime against the elderly, such as this Study Group, must rely on anecdotal information regarding elder abuse, neglect and exploitation or extrapolate from national data.
- Currently there is no information available though Uniform Crime Reports on the age of victims of crime in Maine. The expected implementation of the National Incident Based Reporting System (NIBRS) will provide a vehicle for collecting data on numbers and types of crimes in this category. Data will also be needed on the characteristics of perpetrators, the way these cases are handled by law enforcement and prosecutorial agencies, and the outcome of cases.

- The only data currently available on criminal investigation and prosecution of crimes against older people are the data from the Medicaid Fraud Control Unit on staff-to-resident abuse, neglect and exploitation.
- Data on reports to the Department of Human Services' Bureau of Elder and Adult Services of abuse, neglect and exploitation are currently out of date and need to be updated for 1994, 1995 and 1996. The Department has not made the collection of these data a priority.
- Useful data on consumer fraud and financial exploitation are available from the Attorney General's Consumer Mediation Service and from Legal Services for the Elderly's Hotline. The information is sketchy however, because it is derived solely from people who affirmatively seek out help for their problems: a group which represents only a fraction of the affected population.
- The Maine Board of Bar Overseers has not, until recently, kept statistics on complaints and disciplinary action taken under the "elder law" category; hence there has been no readily available information on the role of attorneys in the area of exploitation of vulnerable elderly people, whether as effective responders against exploitation, unwitting facilitators or perpetrators. (The Board has just started gathering data in this area.)

Study Group Recommendations and Action Steps

1. Raise awareness of elder abuse, neglect and exploitation through efforts by public-private partnerships, spearheaded by the Department of Human Services.

- Older people tend to be supportive and appreciative of the role of law enforcement; yet ask much less of law enforcement than other age groups do. Police and prosecutors will be better able to respond to crimes against older people if they reach out to senior citizens to identify their concerns and develop a relationship of trust. An example of this type of outreach is the successful "Triad" program undertaken by the Kennebec County Sheriff's Office in cooperation with the AARP, in which the Sheriff's office provided forums for older people to talk about their concerns about crime in their communities. The Triad is an inexpensive program which should be replicated in other parts of the State.
- There should be a public awareness campaign directed at the community at large, making clear that elder abuse, neglect and exploitation should be taken seriously and reported to law enforcement or the Department of Human Services. The campaign should include information on the emotional and physical toll borne by victims of elder abuse, as well as information on the financial cost to taxpayers.

AARP, Legal Services for the Elderly and Maine's area agencies on aging stand ready to assist in this effort. These efforts should be made, if possible, in conjunction with the regional family violence councils which are already in existence. Public awareness efforts should include information on the following subjects: domestic violence; financial exploitation; misuse of durable financial powers of attorney; abuse, neglect and exploitation within health care facilities and in home health; consumer and telemarketing fraud.

- There should be mechanisms in place for providing information to individuals who choose to act as fiduciaries for older people under durable powers of attorney, joint bank accounts, and guardianship and conservatorship. The information would consist of an explanation of the duties of a fiduciary to use the older person's money or property for his or her benefit, as well as penalties for failing to fulfill the duties. This information would be made available as follows: 1) as language printed on a statutory durable power of attorney form; 2) through probate courts when a guardian or conservator is appointed; 3) through financial institutions who rely on these types of legal arrangements in allowing fiduciaries access to an older person's money or property. This information would serve to educate well meaning individuals trying to help out a family member and would also help prosecutors establish the element of "intent" needed in a criminal prosecution for a crime such as embezzlement, theft, misuse of entrusted property, or endangerment of a dependent person.
- Educational programs should be developed for groups of professionals who serve elderly people and who are in a position to prevent or address exploitation: such as private attorneys, through the Maine State Bar Association; probate judges, through the Maine Probate Judges' Assembly; and bankers and credit unions, through the Maine Bankers' Association, Maine Association of Community Banks, and the Maine Association of Credit Unions.

2. Develop and implement training programs for law enforcement, prosecutors and adult protective services workers, through collaboration between the Department of Human Services, the Maine Criminal Justice Academy, the Office of Attorney General and the statewide associations of police, sheriffs and prosecutors.

A variety of training opportunities should be created for police, sheriffs, prosecutors, and adult protective services. These opportunities should include the following:

- A collaborative, regionally based program of in-service training should be offered to interdisciplinary groups comprised of police, prosecutors, victim-witness advocates, Department of Human Services adult protective services workers and licensing workers, and area agencies on aging on how to respond

effectively to criminal activity against the elderly. The training should be offered to eight small, regionally based groups, corresponding to the eight prosecutorial districts, and should include attendees who will work together in response to elder abuse, neglect and exploitation. In this way, the training will not only impart information and new skills, but offer an opportunity for attendees to develop working relationships. There should be at least one-half day of training, with periodic follow-up sessions to encourage ongoing collaboration and trouble shooting. The training should be developed jointly by the Department of Human Services and the Maine Criminal Justice Academy. The training should be approved for credit for all who attend, through licensing boards for social workers and lawyers and through the Criminal Justice Academy. The training would model another program currently being developed by the Academy on investigating and prosecuting child sexual abuse cases.

- The Academy and the Department of Human Services should also develop educational programs of one to four hours for the annual meetings of the Maine Association of Chiefs of Police and the Maine Sheriffs' Association.
- A module on investigating elder abuse, neglect and exploitation cases should be added to the Maine Criminal Justice Academy's standard curriculum for new police officers. While the Academy's current 12-week training is full, the Study Group believes that the proposed expansion of the training to 18 weeks would allow the inclusion of training on elder abuse.
- Efforts by law enforcement and adult protective services will ultimately be ineffective without the cooperation of prosecutors. Training sessions for prosecutors on the subject of elder abuse, neglect and exploitation should be developed by the Maine Attorney General's Office, in conjunction with the Maine Prosecutors' Association and the Department of Human Services.
- The curricula for these programs should draw heavily on curricula already in use in the states of Massachusetts, Wisconsin and California. The curricula cover: physical conditions affecting older people; dynamics of elder abuse, neglect and exploitation; communications issues; investigation and evidence gathering; and special issues such as financial exploitation, scams against the elderly, and domestic violence.
- In addition, staff of the Department of Human Services, including adult protective services, licensing and audit, should receive training on gathering and preserving evidence.

3. Create opportunities for ongoing communication between law enforcement, prosecutors and adult protective services and for the development of effective working relationships.

- The training sessions should be followed up with periodic, facilitated meetings between law enforcement, prosecutors and adult protective services. Other opportunities for networking should be fostered as well.

4. Increase the capacity of public agencies to respond to crimes against the elderly.

- The Office of the Attorney General should receive funding for the addition of one prosecutor and one investigator to work full time on elder abuse, neglect, exploitation and consumer fraud cases, both in a supportive role to local agencies and in a primary role on difficult or complex cases. The staff would identify statewide trends, take the lead in multi-jurisdiction cases and develop “best practices” for responding to these cases. The cost to State government would be approximately \$110,771. It is likely that such cost would be offset by recoupment of moneys for the Medicaid program in financial exploitation cases, many of which currently are not addressed.
- The current staff at the Department of Human Services’ Bureau Elder and Adult Services may prove inadequate to respond to increased reports of abuse, neglect and exploitation of the elderly which may result from greater public awareness, better training and improved capacity in other parts of the system. Additional staff are likely to be needed to do intake, investigation, case management, training and collaboration with law enforcement.
- Similarly, the ranks of local prosecutors, judges, court clerks and probation and parole officers will need to be expanded if perpetrators of crimes against older people are to be prosecuted and punished. This would lessen the delays faced by elderly victims and litigants and would make courts a more hospitable environment for them.

5. Enact statutory and regulatory changes governing fiduciary arrangements, including durable powers of attorney, joint bank accounts, and conservatorship, in order to prevent financial exploitation.

The following amendments to Maine statutes should be made:

- An amendment to Maine’s durable power of attorney law, 18-A M.R.S.A. Section 5-501 et seq., explicitly defining the duty of an agent under a durable

financial power of attorney. The definition would restate the standard currently in case law: that the agent is a fiduciary, with the same duties imposed on trustees, and that the agent has the duty to act with utmost faith and loyalty. The statutory definition would impose the additional requirement that the agent may not make gifts under a durable financial power of attorney unless explicitly authorized to do so in the document.

- An amendment to Maine's Durable Power of Attorney Act, 18-A M.R.S.A. Section 5-501 et seq., to require that durable financial powers of attorney include advisory language directed to the principal and to the agent. The language directed to the principal would warn of the potential consequences of signing the form, while the language directed to the agent would warn of the responsibilities involved and the potential civil and criminal liability for violating the duty. The inclusion of the warning to the principal will serve to prevent exploitation. The inclusion of the warning to the agent will also have a preventive effect and at the same time will make it easier to prosecute perpetrators of exploitation by making it possible for prosecutors to establish the element of "intent."
- An amendment to the law requiring that durable powers of attorney for finances be notarized, in order to prevent forgery and other forms of fraud in the execution of these documents.
- Expansion of the mandatory reporting law under the Adult Protective Services Act to include bank and credit union employees, financial planners, stock brokers and unlicensed assistive personnel as mandated reporters. Although the study group received no comments from the banking industry on this proposal, it is anticipated that this proposal may be controversial.
- Refer to Legislature's Criminal Law Advisory Commission a proposal to amend the criminal statute, "Endangering the Welfare of a Dependent Person," 17-A M.R.S.A. Section 555, to encompass financial exploitation.
- A requirement that conservators of estates in excess of \$10,000 obtain a bond or other surety sufficient in amount to protect the estate, unless the probate court makes an explicit finding as to why no bond or surety should be required. Victims of exploitation by conservators would then be able to recover, and bonding companies would screen out potential conservators who are untrustworthy or who have a history of exploiting others.
- Accompanying this requirement should be the adoption of statutory standards governing the requirement of a bond or other surety. These standards would guide the courts in deciding when the circumstances justify excusing a conservator from the requirement of a bond or other surety, as well as the type

and extent of protection required for an estate. These standards should be developed over the next year with input from probate judges, attorneys and interested parties such as the Department of Human Services.

6. Encourage banks and credit unions to develop strategies for preventing financial exploitation, in cooperation with the Department of Human Services and law enforcement.

The banking industry should also be encouraged to undertake voluntary measures to develop mechanisms for protecting account holders against misappropriation of their funds by others, including consumer scams and misuse of durable powers of attorney and joint bank accounts. This was done in Massachusetts in a cooperative endeavor between the banks and the Department of Elder Affairs, known as the "Bank Reporting Project." Strategies might include:

- Banks' distribution of fact sheets to older customers and to people taking care of their finances. This information would include information on the duties of a fiduciary (including conservators and agents under powers of attorney) and would warn of civil and criminal liability for misuse of a power of attorney.
- Adoption of protocols to prevent financial exploitation of account holders, including: protocols for accepting durable powers of attorney, for allowing access to accounts, for allowing the creation of joint bank accounts, and for reporting suspicions of exploitation to the Department of Human Services and other authorities.
- Training to bank and credit union personnel, particularly security officers and tellers, on financial exploitation and protocols for prevention and reporting.

7. Develop mechanisms for gathering accurate and meaningful information on crime against the elderly.

- With the start-up in Maine of the National Incident Based Reporting System (NIBRS) by law enforcement agencies, there will potentially be available information on crime, broken down by the age of the victim. It may be possible to determine the types of crimes committed against elders, the characteristics of perpetrators, and the environments in which these crimes are committed.
- However, information gathering must be accompanied by training and public awareness initiatives. NIBRS will not capture meaningful data unless crimes are reported by the public and activity against the elderly is correctly identified as criminal by law enforcement.

- Resources should be allocated to the Department of Human Services to keep up-to-date information on reports to and investigations by the adult protective services program.
- The Department of Human Services should explore mechanisms for maintaining more comprehensive information than is currently possible under its Registry of Certified Nursing Assistants. The Registry currently excludes information on unlicensed long term care workers.
- Since learning of the Study Group's interest in this area, the Maine Board of Bar Overseers has revised its taxonomy by including "elder law" as a category for gathering statistics on complaints and disciplinary action against attorneys.

8. Identify funding mechanisms for the enhancement of public agencies' ability to address elder abuse.

Possible funding sources for the implementation of training programs, public awareness campaigns, addition of staff, and development of information systems include:

- Federal grant programs through the U.S. Department of Justice and the Administration on Aging. These grants would cover start-up costs and pilot projects, but would need to be followed by ongoing funding from sources within the state.
- Tuition from members of the public who want to attend training programs at the Criminal Justice Academy. This is already being considered as a source or revenue for law enforcement training in other subject matter areas.
- Increased fines and surcharges imposed on offenders.

Conclusion

Participants in the study group felt that the process of meeting and developing collaborative responses to the problem of crime against the elderly was well worth the time and effort involved. Members will continue to meet in the coming months to develop training programs, to increase public awareness of elder abuse, neglect and exploitation, and to seek passage of its proposed legislation, "An Act to Implement the Recommendations of the Department of Human Services Study Group on Prosecution of Crimes Against the Elderly."

**Appendix A to Draft Report of DHS Study Group:
Case Histories of Reported Crimes Against the Elderly
December 4, 1996**

1. In 1990, the Medicaid Fraud Control Unit handled a case involving misappropriation of resident funds by the administrator of a nursing home in downeast Maine. The case resulted in her conviction on a number of charges, including the theft of funds from one particular resident. The administrator had applied to the probate court to become the resident's guardian. That application was denied because Maine law does not allow nursing home administrators to be guardians for residents in their facilities. The administrator was, however, able to get her name added to the resident's bank account and began handling the resident's funds. The administrator was subsequently terminated from her position at the nursing home because of a number of issues including Medicaid fraud. During the course of the investigation, a search warrant was executed upon the administrator's home. During that search, a metal box containing more than \$23,000 in cash belonging to the nursing home resident was seized and returned to her.

2. In 1991, the Department of Human Services investigated a report that a severely demented nursing home resident in western Maine was being physically and sexually abused in the nursing home by her son. Two nursing home employees had witnessed the son putting his hand up his mother's skirt on several visits to the nursing home, both in her room and on the grounds behind the nursing home. On one occasion, he was observed holding a knife against her face. He was also seen wheeling his mother out into a rainstorm, letting go of her wheelchair on the handicap ramp, and taking away her food and medication. When bathed, the woman was observed to have reddened genitals. Nursing home staff were afraid of the son, who had threatened to burn down the nursing home and was reputed to be a gun dealer. The Department petitioned the probate court to become the woman's guardian, for the purpose of protecting her against the abuse. After a contested hearing, the court instead appointed the alleged perpetrator's brother, who had testified that he did not believe the accounts of abuse and would not limit visits by the alleged perpetrator. The court order stated that the woman could not be moved from the nursing home without court approval, but the guardian eventually moved her to another facility. The Department made a referral to local law enforcement and the district attorney's office. The case was assigned to a detective but was never prosecuted.

3. In 1991, the Sheriff's office in a Southern Maine county responded to a report that an elderly man had been found beaten and unconscious in the woods. An investigation established that the man, an alcoholic, had befriended a younger man while spending a night in jail for disorderly conduct. The younger man, on being released from jail with the elderly man, persuaded him to cash his Social Security check. The younger man and his girlfriend then beat up the elderly man and left him in the woods. Faced with the difficulty of getting reliable testimony from the victim, who was rarely sober, the

victim-witness advocate and the investigating detective managed to videotape a deposition during a brief period when the victim was lucid. On the basis of the testimony, the perpetrator pled guilty to assault with a deadly weapon and served time in jail.

4. An elderly woman suffering from dementia was struck repeatedly by her son, who cared for her in his home in southern Maine. A neighbor, witnessing the incident in the entry way to the family home, called the police and adult protective services. Although the mother was not competent to testify, the case was prosecuted successfully with the testimony of the eye witness. The son, who was a respected member of the community, was sentenced to two days in jail, fined and placed on probation. His brother, living out of state, agreed to take responsibility for his mother's care.

5. An elderly woman in southern Maine was assaulted in her kitchen by her husband, who struck her on the head with a cast iron stove-top ring. Dazed and bloodied, the woman wandered the streets until she was found by police, who accompanied her home and arrested her husband. Charges were brought by the local district attorney, who intended to bring a case based on the police officers' observations, physical evidence including the blood in the kitchen and the instrument used, and the reluctant testimony of the victim. The husband was released on bail on the condition that he stay away from the victim. During the period of bail, the victim related to the victim-witness advocate and the district attorney a history of emotional and physical abuse during the couple's entire 50-year marriage. The victim's five adult children were hostile to prosecutors and police for "breaking up a good marriage." The victim's grandchildren, however, cooperated with the investigation and corroborated the victim's account. The husband eventually pled guilty. On the recommendation of the district attorney, he received a suspended sentence on the condition that he not see his wife. The victim, a devout Catholic, chose not to divorce her husband but to live apart from him in an assisted living situation, where she now continues to live.

6. In 1993, the DHS responded to a complaint from a boarding home in northern Maine that a resident's bill was not being paid, although it was well known in the community that the resident was a person of some property. An investigation established that the resident had recently executed a durable power of attorney to a young man who had one time been his foster son. On the very same day he received the power of attorney, the younger man closed out all the resident's bank accounts, with funds exceeding \$120,000, placing some funds in his own account at the same bank and withdrawing the rest for his immediate use. The Department was appointed the resident's conservator and has retained an attorney, who has filed a civil action against the younger man, now pending. The local district attorney to whom the Department referred the case declined to prosecute because he believed that a crime could not be proven beyond a reasonable doubt. Unless money can be recovered, the cost of the victim's care in a nursing facility will continue to be covered by the Medicaid program.

7. In July 1994, Department of Human Services began an investigation of alleged financial exploitation by two nieces of an elderly woman in southern Maine, following a report from the boarding home in which she resided. The previous year the nieces had been appointed as her conservators by the probate court but were no longer paying for her care at the boarding home, with the result that she was threatened with eviction. On the Department's petition, the probate court removed the nieces as conservators and appointed the Department in their place. Records obtained subsequently from banks and other sources revealed the misappropriation of more than \$70,000 in money and property, including the proceeds from the sale of her home, her monthly retirement benefit, her car and antiques, and her savings account. The nieces subsequently moved out of state. The Department was successful on a motion for sanctions brought in the probate court, seeking reimbursement from the nieces. The nieces remained out of state during the proceedings, but responded to some of the discovery requests and mailed written material to the court in their defense. They failed to convince the court that the money taken was earned for "services" allegedly provided to their aunt or that a real estate broker's fee to one of the nieces was justified. It appears unlikely at this point that the Department will be able to recover from the nieces, who now work out of state as a real estate broker and a social worker. A referral has been made to the local district attorney, who may prosecute using the evidence gathered by the Department in the course of its investigation and probate proceedings. In the meantime, the victim of the exploitation has been unable to pay privately for her care, which is being covered primarily by the Medicaid program.

8. In March 1995, the Medicaid Fraud Control Unit prosecuted a certified nursing assistant (CNA) in central Maine area who had been accused of verbally abusing and then shoving a 92-year old resident in the shoulder with enough force to move the resident's shoulder approximately a foot. The CNA was acquitted of assault following a jury trial in Superior Court when the trial justice granted a defense motion for judgment of acquittal after the State rested its case, despite eye-witness testimony that the blow was loud enough to make a popping noise from 15 feet away.

9. In another case handled by the Medicaid Fraud Control Unit in February 1995, a CNA was charged in a District Court in southern Maine with one count of assault. There were two witnesses to her verbally abusing and slapping a combative Alzheimer's' resident in the head in a nursing home. In August 1995, she was acquitted of the assault charge following a three-day jury trial in the Superior Court.

10. A proceeding was initiated in a probate court in June 1995, alleging that a nephew of an elderly incapacitated woman converted a substantial portion of her estate over a period of several years. The alleged wrongful conduct occurred over a period of time that the aunt was declining mentally and continued during the nephew's tenure as her guardian and conservator. During the period that the petition for guardianship and conservatorship was pending, the nephew, under a power of attorney, took out a \$50,000 mortgage on the aunt's residence and used the proceeds to pay himself money that he "earned" under a contract with the aunt that he had signed himself as agent under the power of attorney. After being appointed guardian and conservator, the nephew

“borrowed” another \$50,000 from the aunt and purchased, under a bond for deed, apartments in Portland, which have since been repossessed by the owner. The incapacitated aunt’s bank, concerned about large transfers from the aunt’s account to the nephew’s, contacted the district attorney. The bank then brought the case to the attention of the woman’s elderly brother, who hired a private attorney to take action in her behalf. The nephew has filed a notice of claim against the bank, stating that he will sue the bank for its breach of confidentiality in reporting the alleged wrongful conduct to a third party. During the discovery process, additional transfers were identified, all totaling more than \$200,000. The attorney fees in the lawsuit are substantial with no resolution to date. To date there has been no prosecution of the nephew.

11. In the summer of 1991, a paving company visited the home of an older couple in Princeton, Maine, offering to re-pave their driveway. The couple agreed, and paid him \$4800. It was apparent within a month that the job was inadequate, breaking apart, allowing grass to grow through, creating drainage problems, and leaving a lip where the driveway met the road, posing a danger to snowplows. The couple subsequently found out that nine other people in their area had had the same experience. Over the next year, they made repeated calls to the paving company, which did business under two names and whose owner apparently used four different names. Representatives of the company repeatedly promised to fix the job but never did. The company’s phone was eventually disconnected. The couple sought help from law enforcement, their legislator, the Governor, the Maine Attorney General’s Office and the Better Business Bureau in Boston. The case was eventually referred to the Attorney General’s Consumer Mediation Service. The Consumer Mediation Service managed to reach the apparent owner of the paving company and met with him twice. The owner again promised to fix the job but never carried through. As the result of a police investigation, one of the representatives of the paving company was scheduled for arraignment in Calais District Court but never showed up in court. The couple are not aware of any further action against him or the paving company.

12. Police from Wells, Maine describe a pattern of activity in which people approach elderly homeowners with offers to do yard work and home repair. The perpetrators take the opportunity, while the homeowner is distracted, to burglarize the house, frequently stealing and forging checks and getting a third party to cash them. In one case, the police were alerted by a bank teller when crew members working on a patio and foundation repair job at an elderly woman’s house were cashing multiple checks drawn on her account for thousands of dollars. The woman had Alzheimer’s disease and the crew was “helping” her write checks to them. In addition to the money taken, it cost \$30,000 to repair the “work” done by the crew. The owner of the operation was prosecuted, pled guilty, and served two and a half years in jail. As part of his plea agreement, he agreed not to operate a business anymore. He is now out of jail and employed by his sons in a home repair business.

13. In a case reported in the Portland Press Herald on November 16, 1996, a home health aide pled guilty to bank fraud for taking nearly \$60,000 from an 84-year-old woman. The aide provided care for the woman in the older woman's home, first as an employee of a Portland home health agency and, after quitting the agency, on her own. She was sentenced in federal court to 21 months in prison for stealing blank checks from the client on four separate occasions and cashing them in amounts of \$700 or \$800 at five different bank branch office. At one branch she claimed to be the client's niece and at another branch to be taking care of her banking. She also intercepted the client's mail in order to avoid detection. The client's family eventually discovered the theft and reported it to the bank, which alerted the Department of Human Services' adult protective division and the Medicaid Fraud Control Unit. The U.S. Attorney agreed to prosecute and was able to get the perpetrator to return to Maine voluntarily from Colorado, where she had moved. Upon completion of her prison term, the perpetrator is ordered to pay restitution to the bank, which has reimbursed the victim.

Appendix B:

Data on Elder Abuse, Neglect and Exploitation

Elder Abuse, Neglect, and Exploitation
in Non-Institutional Settings in Maine.
Based on Reports to Maine Department of Human Services,
Bureau of Elder and Adult Services

Reports to DHS, Investigations and Findings		
	1993	1994
Reports of Elder Abuse, Neglect, or Exploitation in Domestic Settings	3,448	3,374
Reports Screened Out	2,624	2,420
Reports Investigated	824	954
Reports Substantiated	379	434
Maltreatment by Others Found	114	131
Self-Neglect Found	265	303

Cases of Elder Abuse, Neglect or Exploitation, Substantiated by DHS: Types of Maltreatment		
	1993	1994
Neglect (including Self Neglect)	284	325
Exploitation	68	77
Physical Abuse	11	12
Emotional Abuse	11	12
Sexual Abuse	5	6

Cases of Elder Abuse, Neglect or Exploitation, Substantiated by DHS: Characteristics of Elderly Victims of Abuse by Others		
	1993	1994
Male	78	90
Female	36	41
60-64	6	7
65-74	25	29
75-84	51	58
85+	33	37

Types of Reporters of Abuse, Neglect and Exploitation to DHS		
	1993	1994
Aging Services Provider	1,717	1,680
Physician/ Health Care Provider	634	621
Law Enforcement	72	71
Private Attorney	369	361
Relative	224	219
Friend/ Neighbor	34	34
Bank/ Business	93	91
Elder Victim	28	27
Other	166	162
Anonymous/ Unknown	111	108

Maine Office of Attorney General, Medicaid Fraud Control Unit: Data on Staff-to-Patient Abuse, Neglect and Exploitation in Health Care Facilities Receiving Medicaid Funds			
	1993-1994	1994-1995	1995-1996
Referrals from:			
Department of Human Services	87	94	92
Health Care Providers, and Others	17	26	22
Investigation Opened by MCFU	11	8	7
Convictions During Period	5	6	6
Acquittals During Period	0	2	1

Appendix C:
Summary of Public Comments
on Draft Report of DHS Study Group
on Prosecution of Crimes Against the Elderly

Comment on “Introduction” and “Components of System”

- *Comment:* A representative of the Patient Advocate’s office of the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) commented that the Study Group should also study the problems faced by people with mental illness and mental retardation in the criminal justice system. The commenter noted that the DMHMRSAS also administers a program of adult protective services and public guardianship/ conservatorship for people with mental retardation and that this program should also have a role in preventing and responding to crimes against these vulnerable populations.

Study Group Response: The Study Group agreed that people with mental illness and mental retardation are vulnerable in similar ways to older people, and that many of the recommendations in the report are applicable to younger populations with similar disabilities. This was acknowledged in the report, as is the role of the DMHMRSAS adult protective services and public guardianship/ conservatorship program. The Study Group did not, however, delay submission of the report because of the legislatively imposed deadline of November 1, 1996.

Comments on Recommendation #1: Raising Awareness of Elder Abuse, Neglect and Exploitation

- *Comment:* The Chief Justice of the Maine Supreme Judicial Court commented that public awareness efforts regarding elder abuse, neglect and exploitation should be made in concert with existing family violence projects concerned with domestic violence and child abuse.

Study Group Response: The Study Group agreed, and made a recommendation to this end.

- *Comment:* Two representatives of the Maine chapter of the American Association of Retired Persons (AARP), one of whom had worked on a consumer hotline and counseled a number of older victims, recommended that the Study Group raise public awareness of fraudulent telemarketing. Similarly, a detective from the Wells Police Department described a pattern of consumer fraud against elderly homeowners by home maintenance and paving businesses. He had publicized and held a seminar for older people on crime prevention, which was not well attended, and recommended that other more effective approaches, such as simple handouts, be explored.

Study Group Response: The Study Group agreed that telemarketing fraud against older people is a pervasive problem and that public awareness activities should include a discussion of telemarketing and consumer fraud. The Study Group agreed that public awareness efforts needed to be carefully tailored to reach older people.

- *Comment:* Representatives of Maine AARP, the Area Agencies on Aging, and Legal Services for the Elderly, recommended that these agencies be involved in public awareness efforts and other implementation activities.

Study Group Response: The Study Group agreed, and made mention of these groups in its recommendations regarding public awareness efforts.

- *Comment:* A representative of an Area Agency on Aging recommended that public awareness efforts include information on the danger of abuse, neglect or exploitation by home health workers, including information on how to obtain criminal background information on applicants for these positions.

Study Group Response: The Study Group agreed, and reflected this in its recommendations.

- *Comment:* A representative of the Maine chapter of AARP praised the “Triad” model of law enforcement agency outreach to senior citizens, undertaken by the Kennebec County Sheriff’s Office in cooperation with AARP, and recommended that other law enforcement agencies start Triad programs.

Study Group Response: The Study Group agreed and recommended replication of the Triad program.

- *Comment:* A representative of Legal Services for the Elderly recommended raising public awareness of financial exploitation, particularly misuse of durable financial powers of attorney. The commenter recommended that such educational efforts be used in lieu of statutory changes to the durable power of attorney law.

Study Group Response: The Study Group agreed on the need for greater understanding of financial exploitation and durable financial powers of attorney, but decided to take a two-pronged approach, to include statutory changes as well as public awareness. (See comments on Recommendation #5, below.)

- *Comment:* The Chief Justice recommended that the Study Group collaborate with the Probate Judges Assembly to hold training on elder abuse, neglect and exploitation for Judges of Probate. A representative of the Probate Judges Assembly indicated that the Assembly would be interested in such training.

Study Group Response: The Study Group agreed and made a recommendation to this effect.

- *Comment:* A representative of the Probate Judges Assembly commented on the role that banks can play in preventing financial exploitation, commenting that he gets at least one call per month from banks to his law practice, asking for guidance on how to handle a suspicious situation potentially involving misuse of an account holder’s funds, often involving a durable financial power of attorney. When consulted, he advises these callers on the prohibition against self-dealing. He believes that a “bell should go off” every time a bank employee deals with a durable power of attorney. He recommended collaboration with the bankers’ associations in an effort to raise awareness among bank employees.

Study Group Response: The Study Group agreed and made a recommendation to this effect.

Comments on Recommendation #2: Development of Training Programs for Law Enforcement, Prosecutors and Adult Protective Services

- *Comment:* Representatives of the Maine Criminal Justice Academy and the Maine Association of Chiefs of Police recommended that, as a first step in developing training programs, the interested groups work together to develop one to four hour presentations to the police, sheriffs' and prosecutors' associations. While the proposal of interdisciplinary, regional training is a good idea, local law enforcement agencies may find it difficult to let officers attend because of staffing problems.

Study Group Response: A training committee made up of representatives of the Chiefs' Association, the Criminal Justice Academy, the Department of Human Services and other interested groups has been organized and is in the process of developing a curriculum and recruiting trainers for the March 1997 meeting of the Maine Chiefs' Association.

- *Comment:* Representatives of the Police Chiefs' Association and the Criminal Justice Academy stated that it was essential to foster interest in elder abuse issues among prosecutors before attempting to recruit them for the more ambitious team training sessions that may occur later. They recommended that the Attorney General's Office take the lead in developing such training for local prosecutors.

Study Group Response: The Study Group agreed and made a recommendation that this training be developed. Two staff members of the Attorney General's Office, as well as a representative of the Maine Prosecutors' Association, are working on this.

Comments on Recommendation #4: Increasing Capacity of Public Agencies to Respond to Crimes Against the Elderly

- *Comment:* A representative of an Area Agency on Aging commented that Maine does not have an adequate number of trial judges and that any effort to increase prosecution of crimes against the elderly will be ineffective without increasing the courts' capacity to hear such cases. The commenter also pointed out that the inadequate number of judges also contributes to delays facing elderly victims and litigants, who may die or lose the capacity to testify before a case comes to trial.

Study Group Response: The Study Group agreed and made a recommendation that Maine expand its judiciary. This generated additional discussion among Study Group members of other staffing shortages in the courts and corrections system, resulting in a recommendation that Maine increase the number of court clerks and probation and parole officers as well.

- *Comment:* Two commenters told a story of an incapacitated older relative, now in a nursing home, whom they reported had been financially exploited by another relative. They were advised by their attorney to rely on the Department of Human Services to address the situation by seeking public conservatorship. The commenters were troubled by what they said was a year-long delay in the Department's obtaining the conservatorship.

Study Group Response: The Study Group had already recommended, in its Draft Report, the addition of staff to the Department's adult protective services program, which might serve to lessen delays in obtaining court appointments. The Department also explained its system of prioritizing referrals for guardianship/ conservatorship and that referrals concerning clients who were in a safe surrounding, such as a stable nursing home placement, were lower priority for Departmental action than other referrals involving clients in immediate danger. In response to the commenters' complaint, a member of the Department of Human Services' central office facilitated communication between the commenters and the regional office caseworkers assigned to the project. The commenters were also given information about how they might themselves petition for guardianship and conservatorship.

- *Comment:* An older couple from Princeton, Maine, wrote to the Study Group about their experience as victims of consumer fraud at the hands of a paving company and their failure to obtain redress from the Maine Attorney General's Consumer Mediation Service. They were unhappy with the fact that the company was never prosecuted and that they received no refund or repair of their driveway.

Study Group Response: The Study Group included this example in the case examples in Appendix A to its Report. (See example #11.) The Study Group also identified the Consumer Mediation Service as a component of the system charged with responding to crimes against the elderly. The Study Group pointed out that the Consumer Mediation Service, which in this particular case made significant and appropriate efforts to contact the contractor and mediate a solution, is only able to help if the merchant or business is willing to cooperate and may be ineffective against scam artists. The Study Group recommended that the Department of Attorney General receive resources to increase its capacity to prosecute consumer fraud cases as well as other crimes against older people: specifically, resources sufficient to hire one prosecutor and one investigator.

- *Comment:* A representative of the Eastern Area Agency on Aging testified that recipients of home health services are frequently vulnerable to abuse, neglect and exploitation. Some consumers and their families hire individuals to provide in-home services entirely on their own, without the help of an agency, and may unwittingly hire individuals with a background of abuse, neglect or exploitation. These consumers and families should be encouraged to conduct a criminal background check when hiring these workers. This commenter was also concerned that the Registry of Certified Nursing Assistants maintained by the Department of Human Services' Division of Licensing and Certification does not maintain comprehensive information on long term care workers, such as information on unlicensed personnel. The commenter also expressed the view that home health agencies should do more than check with the CNA Registry for information on a potential employee's background and should do their own criminal background checks.

Study Group Response: The Study Group agreed and made a recommendation that public awareness efforts include a discussion of abuse in the home health context. The Study Group also recommended exploration by the Department of Human Services of making the CNA Registry more comprehensive in the information kept.

- *Comment:* In a similar vein, a detective from the Wells Police Department told the Study Group of a pattern of criminal activity in southern Maine which included scams targeted against older homeowners by home repair and paving businesses, as well as theft committed by some crew members when given access to the victims' homes.

Study Group Response: The Study Group profiled this type of criminal activity in both the Report and the case examples in Appendix A. (See example #12.)

Comments on Recommendation #5: Enacting Statutory and Regulatory Changes Governing Fiduciary Arrangements

- *Comment:* The Draft Report included a recommendation that Maine law be amended to require that conservators of estates of \$10,000 or more file a bond protecting the estate against loss or mismanagement by the conservator. Two commenters, representing Legal Services for the Elderly and the Probate Judges Assembly, stated that the size of the estate was an arbitrary criterion and that the risk of loss did not in every case justify the bond requirement, with its corresponding cost to the estate. The commenter from Legal Services for the Elderly recommended, in place of this requirement, the promulgation of standards to govern when a bond should be required of a conservator. The commenter from the Probate Judges' Assembly commented that the law should allow conservators to provide a surety other than a corporate bond, such as a pledge of property.

Study Group Response: The Study Group modified its recommendation to allow sureties other than a corporate bond and to allow an exception to the bond requirement where the probate court makes an explicit finding as to the reason for excusing the conservator from the requirement. The Study Group also recommended the promulgation of statutory standards governing the imposition of the bond requirement, to take place over the next year with input from the probate courts, the private bar and interested parties such as the Department of Human Services.

- *Comment:* While agreeing with the recommendation that durable financial powers of attorney be notarized, a representative of Legal Services for the Elderly did not support the Study Group's other recommendations with respect to the durable powers of attorney: a) He recommended against the development of a statutory form. He believed this would encourage clients to execute durable powers of attorney without using a lawyer, thereby increasing the risk of financial exploitation. b) He believed that a warning to the agent under the durable power of attorney would be ineffective. c) He did not support the requirement (proposed in the draft report) that durable financial powers of attorney be filed in a central location such as the Secretary of State's office, because he considered it to be unduly burdensome and ineffective against financial exploitation.

Study Group Response: The Study Group modified its recommendations with respect to the durable financial power of attorney, as follows: a) The Study Group eliminated the recommendation that durable powers of attorney be filed in a central location, taking note of research that similar requirements in other states have been costly and ineffective. b) The Study Group also deleted the recommendation that the statute be amended to include an optional "statutory" form. c) However, the Study Group adhered to its recommendation that durable financial powers of attorney include advisory language to agents under these forms, informing them of the duties undertaken and the potential criminal and civil liability for

neglecting or violating these duties. Prosecutor members of the Study Group were convinced the warning language would be a useful tool in establishing a perpetrator's intent. The law would be amended to require that all durable financial powers of attorney include the warning language set forth in the statute. d) The Study Group proposed an amendment to the statute defining the agent's fiduciary duty and prohibiting gifts of the principal's property absent specific authority to do so. e) The Study Group also decided to require that all durable financial power of attorney forms include advisory language directed to the principal regarding the potential consequences of signing a durable power of attorney, encouraging the principal to seek legal advice.

- *Comment:* The representative of Legal Services from the Elderly recommended against an amendment to the Adult Protective Services Act to require that banks be mandated reporters of financial exploitation. The commenter stated that this would expose banks to liability, that it would hold banks to a standard greater than "ordinary care," and that bank employees lacked the expertise to accurately identify financial exploitation.

Study Group Response: The Study Group decided to adhere to its recommendation that banks be mandated reporters to adult protective services. Banks currently are "optional" reporters to adult protective services and are immune from liability under the law as long as they make reports in good faith. The Study Group took note of the fact that banks do, in fact, make reports to the Department of Human Services and that many in the banking industry are concerned about protecting account holders against misuse of funds. The Study Group rejected the proposition that this change in the law would subject banks to additional liability, reasoning that banks may well face liability for failure to protect account holders by making a report. The Study Group believes that if banks are mandated rather than optional reporters, they will have a better defense against any claims of wrongful disclosure of account holder information and will be protected under 22 M.R.S.A. Section 3479-A, immunity for reports made in good faith. The Study Group specifically took note of one of the cases described in Appendix A to its report (example #10), in which a bank which made a good faith report of an egregious example of financial exploitation faces a law suit by the alleged perpetrator. The Study Group believes that banks such as this one will be in a more defensible position if they are mandated reporters. Also, the Study Group disagreed that bank employees lacked expertise to identify financial exploitation, noting that the law merely requires a report if there is "reasonable cause to suspect."

Comments on Recommendation #6: Encouraging Banks to Develop Strategies for Preventing Financial Exploitation

- *Comment:* The draft report recommended that banks be required to provide information on duties and liabilities to agents under durable powers of attorney. A representative of Legal Services for the Elderly suggested that this recommendation would be burdensome to banks, who might stop accepting durable powers of attorney altogether, necessitating that people resort to more expensive and burdensome alternatives such as conservatorship. The commenter also recommended against any change in the way that joint accounts are created. The commenter suggested that banks be encouraged to take voluntary measures to prevent and respond to financial exploitation.

Study Group Response: The Study Group deleted its recommendation that banks be required to provide information to agents under durable financial powers of attorney, as well as changes in the procedures for creating joint bank accounts. The Study Group opted instead for a recommendation that the banking industry take voluntary measures, in collaboration with the Department of Human Services and law enforcement, to prevent and respond to financial exploitation, similar to the Massachusetts Bank Reporting Project.

- *Comment:* A representative of the Probate Judges' Assembly recommended training for banks on the subject of financial exploitation and durable power of attorney abuse.

Study Group Response: The Study Group recommended training to bank employees on financial exploitation.

Comments on Recommendation #7: Development of Mechanisms for Gathering Accurate and Meaningful Data

- *Comment:* One commenter, an AARP member, was appalled at the lack of data and recommended that resources be dedicated to compiling data on elder abuse, neglect and exploitation. The Chief Justice also identified the lack of data as a problem.

Study Group Response: The Study Group agreed. The Study Group adhered to its recommendation that the State devote resources to updating Department of Human Services data on the subject and that State and local law enforcement agencies devote resources to complying with the U.S. Department of Justice's National Incident Based Reporting System (NIBRS).

Miscellaneous Comments

- *Comment:* Two representatives of the Maine chapter of AARP, one of whom had worked on a consumer hotline and counseled a number of older victims of telemarketing fraud, suggested that the Study Group explore possible state legislative responses to activities by fraudulent telemarketers.

Study Group Response: The Study Group felt that the problem of telemarketing fraud was too complex an issue for the Study Group to address in a comprehensive way, and that any consideration of legislation addressed at telemarketing be assessed separately.

- *Comment:* Two individuals testified at one of the public hearings about wrongs allegedly committed against an elderly mother by local law enforcement, a bank, a local prosecutor, one or more judges and the Maine attorney general. The alleged crimes included a foreclosure, an arrest, and the taking of a business. One of the individuals expressed the view that there were laws in place to protect the elderly but that these laws were not being enforced.

Study Group Response: The Study Group agreed that there were good laws already on the books to protect older people, but that these laws should still be enhanced.

- *Comment:* An older woman from northern Maine inquired about what protection was available to consumers harmed by a lawyer's conduct. She described a case in which a lawyer hired to handle a real estate closing had failed to obtain title insurance as promised, with the result that she is now faced with a significant title problem.

Study Group Response: The Study Group identified this client's problem as a matter outside the scope of this report. A Department of Human Services staff person wrote her suggesting she contact the Maine Board of Bar Overseers and consult with an attorney about bringing a claim for legal malpractice.

- *Comment:* A representative of a law enforcement agency recommended that the law be changed to require enhanced penalties against people who commit crimes against the elderly.

Study Group Response: The Study Group discussed the possibility of recommending enhanced penalties. One Study Group member was in favor of this position. However, the Study Group ultimately decided against such a recommendation, for these reasons: last session, the Joint Standing Committee on Criminal Justice rejected enhanced penalties in the Governor's long term care bill; sentencing guidelines concerning the age of the victim can be used to argue in favor of longer sentences for perpetrators.