

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4713 HJUD HB 344

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IN THE DISTRICT COURT FOR THE STATE OF ALASKA JUN 1 1985
THIRD JUDICIAL DISTRICT AT VALDEZ

STATE OF ALASKA,)	
)	<u>I N F O R M A T I O N</u>
Plaintiff,)	
)	
vs.)	ASSAULT IN THE FOURTH DEGREE
)	AS 11.41.230(a)(1)
JEFFREY STONE,)	HARASSMENT AS 11.61.120(a)(5)
DOB: 10-9-59)	
Defendant.)	
<hr/>		Case No. 3VA-S85-120 CR.

THE DISTRICT ATTORNEY CHARGES THE FOLLOWING TWELVE MISDEMEANOR COUNTS:

- COUNT 1 ASSAULT IN THE FOURTH DEGREE
- COUNT 2 HARASSMENT
(Victim - Dale Carey)

- COUNT 3 ASSAULT IN THE FOURTH DEGREE
- COUNT 4 HARASSMENT
(Victim - John Kameroff)

- COUNT 5 ASSAULT IN THE FOURTH DEGREE
- COUNT 6 HARASSMENT
(Victim - Carl Miller)

- COUNT 7 ASSAULT IN THE FOURTH DEGREE
- COUNT 8 HARASSMENT
(Victim - Roger Robinson)

- COUNT 9 ASSAULT IN THE FOURTH DEGREE
- COUNT 10 HARASSMENT
(Victim - John Sheratine)

- COUNT 11 ASSAULT IN THE FOURTH DEGREE
- COUNT 12 HARASSMENT
(Victim - Richard Ross)

DATED this 6th day of June, 1985.

NORMAN C. GORSUCH
ATTORNEY GENERAL

DWAYNE W. MCCONNELL
DISTRICT ATTORNEY

BY: Eugene B. Cyrus
Eugene B. Cyrus
Assistant District Attorney

COUNTS 1 and 2

That on or about September to December, 1984, in Valdez, Third Judicial District, State of Alaska, Jeffery Stone did unlawfully cause Dale Carey:

Count 1: physical injury by kicking him in the buttocks.

Count 2 : offensive physical contact by kicking him in the buttocks.

Count 1 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 2 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 3 and 4

That on or about August to October, 1984, in Valdez, Third Judicial District, State of Alaska, Jeffery Stone did unlawfully cause John Kameroff:

Count 3: physical injury by hitting him in the head with a basketball.

Count 4: offensive physical contact by hitting him in the head with a basketball.

Count 3 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 4 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 5 and 6

That on or about October 10, 1984, in Valdez, Third Judicial District, State of Alaska, Jeffery Stone did unlawfully cause Carl Miller:

Count 5: physical injury by kicking him in the back of the legs knocking him to the ground.

Count 6 : offensive physical contact by kicking him in the back of the legs knocking him to the ground.

Count 5 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 6 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 7 and 8

That on or about September to December, 1984, in Valdez, Third Judicial District, State of Alaska, Jeffery Stone did unlawfully cause Roger Robinson:

Count 7: physical injury by hitting him in the head with a basketball.

Count 8 : offensive physical contact by hitting him in the head with a basketball.

Count 7 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 8 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 9 and 10

That on or about September to December, 1984, in Valdez, Third Judicial District, State of Alaska, Jeffery Stone did unlawfully cause John Sheratine:

Count 9: physical injury by hitting him in the head with a basketball.

Count 10: offensive physical contact by hitting him in the head with a basketball.

Count 9 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 10 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 11 AND 12

That on or about and between January to June, 1984, at or near Valdez, in the Third Judicial District, State of Alaska, Jeffery Stone did unlawfully cause Richard Ross:

Count 11: physical injury by kicking him in the buttocks.

Count 12: offensive physical contact by kicking him in the buttocks.

Count 11 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 12 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

MAY 1 1985

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT VALDEZ

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
JEFFREY STONE,)
DOB: 10-9-59)
Defendant.)

Case No. 3VA-S85-120 CR.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT

The undersigned, being first duly sworn upon oath,
deposes and states that:

1. I am a police officer for the Valdez Police
Department and have investigated both major and minor
crimes, including assault. On December 21, 1984 I was
assigned to conduct an investigation concerning allegations
of assaults at the Harborview Developmental Center located
in Valdez, Alaska.

COUNTS 1, 2

2. On February, 1985, I conducted a taped
interview with Larry Preer, a former employee of Harborview
Developmental Center located in Valdez, Alaska. Preer
stated that he had observed Stone throwing a basketball at
Dale Carey and striking Mr. Carey in the head. Mr. Preer
stated that if he or someone else was struck in the same
fashion that it would in fact be painful to them. Preer
stated that he observed this on one and maybe two occasions.
The one incident that he could recall, Carey was attempting
to leave the activity area of Puffin Hall when Stone began
shouting at Carey to return, at which time he did not and
Stone picked up the basketball and threw it rather hard,
striking Carey in the head. Preer was unable to give an
exact date of these incidents, however, he did state that
they had occurred between September 20, 1984 and December
15, 1984.

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3 4
COUNTS 3, 3A

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3. On January 24, 1985, I conducted a taped interview with Molly Ramos an employee of Harborview Developmental Center located in Valdez, Alaska. Ramos stated that between August 1, 1984 and October 1, 1984 she observed Stone throwing a basketball at John Kameroff. She observed the basketball striking Kameroff in the head and further stated that the ball was thrown with quite a bit of force. She did feel that the ball was thrown in such a manner that it was painful for Mr. Kameroff.

5 6
COUNTS 5, 3A

4. On December 28, 1984, I conducted a taped interview with Susan Ness, an employee of Harborview Developmental Center located in Valdez, Alaska. Ms. Ness stated that on October 10, 1984 she observed Stone kick resident Carl Miller. Ness stated that Miller was coming out of the cafeteria area as Stone walked by. She stated that she observed Stone kick Miller from behind, knocking him down to his knees. At this time Miller immediately put up his hands as though to indicate that he did not want to participate in that type of behavior. At this time Stone began punching him in the arm, telling him to get up. Miller continued to indicate that he wanted to be left alone, to get away. Ness indicated that she believed that the kick was to the back of the legs of Miller and that she felt that the incident was an intentional act on Stone's part. Ness further felt that the kick was painful and also as a result of him being knocked to his knees.

7
COUNTS 7, 3A 6

5. Preer further stated that he observed Stone strike Roger Robinson in the head with an inflated basketball. One particular incident that Preer was able to recall well, involved staff members and residents having a barbeque outside the institution. At this time Robinson, who would

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1 begin to wander away from the group, Stone would yell at
2 Robinson to return, when he did not come back right away,
3 Stone would pick up the basketball and throw it at Robinson
4 as hard as he could. Robinson was struck in the head with
5 this basketball. Preer felt that the basketball struck
6 Robinson with such force that it was painful to him. Preer
7 was not able to recall the exact date of this incident,
8 however, he stated it had occurred between September 20,
9 1984 and December 15, 1984.

10 ^{9 10}
11 COUNTS 5, 5A

12 6. Preer further stated that while the residents
13 of Harborview were having an outside barbeque outside the
14 institution he observed Jeffery Stone strike John Sheratine
15 in the head with a basketball. Preer stated that Sheratine
16 would begin to wander away from the group and Stone would
17 yell for Sheratine to return. When Sheratine did not return
18 right away, Stone would throw the basketball at Sheratine
19 striking him in the head. Preer stated that the basketball
20 was thrown in such a fashion that it was painful for
21 Sheratine and that Sheratine could have been injured as a
22 result of being struck in the head. Preer stated that he
23 has observed Stone strike Sheratine in the head on other
24 occasions also with a basketball. Preer stated that this
25 occurred between September 20, 1984 and December 15, 1984.

26 ^{11 12}
27 COUNTS 6, 6A

28 7. On January 18, 1985, I conducted a taped
29 interview with Cindy Schecter, an employee of Harborview
30 Developmental Center located in Valdez, Alaska. Schecter
31 stated that between January, 1984, and the late spring she
32 had observed Stone kick resident Richard Ross numerous
33 times. Schecter stated that Stone had kicked Ross
34

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1 in order to make him stand up. Schecter stated that Ross
2 was kicked hard enough to leave bruises and that she had
3 observed these on several occasions. Schecter further
4 stated that Ross was kicked hard enough to be subjected to
5 pain and that in fact it was painful to Ross.
6

7
8 DATED this 10 day of June, 1985, at
9 Valder. Alaska.

10
11 L. Ross Kline
12 Affiant

13
14 SUBSCRIBED and SWORN to before me this 10th
15 day of June, 1985.

16
17 Janice Christy
18 Notary Public for Alaska
19 My commission expires: 5/14/87

20
21 DISTRICT ATTORNEY, STATE OF ALASKA
22 808 SOUTH CHUGACH STREET, SUITE 3
23 PALMER, ALASKA 99645
24 907/745-5027
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JUN 18 1985

FILED IN TRIAL COURTS
State of Alaska
At Valdez

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

JUN 1 - 1985

THIRD JUDICIAL DISTRICT AT VALDEZ

STATE OF ALASKA,)	
)	<u>I N F O R M A T I O N</u>
Plaintiff,)	
)	
vs.)	HARASSMENT AS 11.61.120(a)(5)
)	
STEVE STONE,)	RECKLESS ENDANGERMENT
DOB: 10-27-53)	AS 11.41.250(a)
Defendant.)	
_____)	Case No. 3VA-S85-119 CR.

THE DISTRICT ATTORNEY CHARGES THE FOLLOWING FIVE MISDEMEANOR COUNTS:

COUNT 1 HARASSMENT (Victim - Michael Sockpick)

COUNT 2: HARASSMENT
COUNT 3 RECKLESS ENDANGERMENT
(Victim - Michael Sockpick)

COUNT 4: HARASSMENT
COUNT 5.: RECKLESS ENDANGERMENT
(Victim - Luke Foley)

DATED this 6th day of June, 1985.

NORMAN C. GORSUCH
ATTORNEY GENERAL

DWAYNE W. MCCONNELL
DISTRICT ATTORNEY

BY: Eugene B. Cyrus
Eugene B. Cyrus
Assistant District Attorney

COUNT 1

That on or about October, 1984, at Valdez, in the Third Judicial District, State of Alaska, Steve Stone, with the intent to harass or annoy, did unlawfully cause offensive physical contact to Michael Sockpick by taping his eyes, mouth, neck and chest in a mummified condition.

All of which is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNT 2

That on or about the Spring of 1983, at Valdez, in the Third Judicial District, State of Alaska, Steve Stone, with the intent to harass or annoy, did unlawfully cause offensive physical contact to Michael Sockpick, a non-ambulatory Harborview resident, by pushing him into a swimming pool causing him to submerge.

All of which is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNT 3

That on or about the Spring of 1983, at Valdez, in the Third Judicial District, State of Alaska, Steve Stone did unlawfully create a substantial risk of serious physical injury to Michael Sockpick, a non-ambulatory Harborview resident, by pushing him into a swimming pool causing him to submerge.

All of which is as Class A Misdemeanor offense being contrary to and in violation of AS 11.41.250(a) and against the peace and dignity of the State of Alaska.

COUNT 4

That on or about the Spring of 1983, at Valdez, in the Third Judicial District, State of Alaska, Steve Stone, with the intent to harass or annoy, did unlawfully cause offensive physical contact to Luke Foley, a non-ambulatory Harborview resident, by pushing him into a swimming pool causing him to submerge.

All of which is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNT 5

That on or about the Spring of 1983, at Valdea, in the Third Judicial District, State of Alaska, Steve Stone did unlawfully create a substantial risk of serious physical injury to Luke Foley, a non-ambulatory Harborview resident, by pushing him into a swimming pool causing him to submerge.

All of which is as Class A Misdemeanor offense being contrary to and in violation of AS 11.41.250(a) and against the peace and dignity of the State of Alaska.

FILED IN TRIAL COURTS
State of Alaska
At Valdez

JUL 1 1985

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IN THE DISTRICT COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT VALDEZ

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
STEVEN STONE,)
DOB: 10-27-53)
Defendant.)

Case No. 3VA-S85-119 CR.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT

The undersigned, being first duly sworn upon oath,
deposes and states that:

1. I am a police officer for the Valdez Police
Department and have investigated both major and minor
crimes, including assault. On December 21, 1984, I was
assigned to conduct an investigation concerning allegations
of assaults at the Harborview Developmental Center located
in Valdez, Alaska.

COUNT 1

2. On December 21, 1984, I conducted a taped
interview with Evelyn Fungcharoen, a registered nurse at
Harborview Developmental Center. Fungcharoen stated that
during the latter part of October, 1984, she had discovered
an incident of abuse at Harborview Developmental Center.
Fungcharoen stated that during her evening rounds, just
before bedtime for the residents, she had gone into the room
of Michael Sockpick and discovered him to have been taped up
with masking tape. Fungcharoen stated she observed that the
tape was wrapped about the head and feet of Sockpick, his
mouth was taped closed as well as his eyes. Fungcharoen
stated that Sockpick is subject to grand mal seizures and
that as a result of being taped up Sockpick was placed in a

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1 situation for potential serious complications. Fungcharoen
2 further stated that Steven Stone admitted to putting the
3 tape about the head and face of Mr. Sockpick.

4 3. On December 21, 1984, I conducted a taped
5 interview with Genelda Moore, an employee of Harborview
6 Developmental Center. Moore stated that during the latter
7 part of October 1984 she had observed Michael Sockpick with
8 masking tape wrapped about his head and face. Moore stated
9 that Sockpick's eyes were taped over, his mouth was taped
10 shut, he was essentially mummified except his nose was not
11 taped closed. Also, a wheelchair armrest was taped to one
12 of his arms and taped around his neck. Moore stated the
13 Sockpick was placed in a potentially dangerous situation due
14 to the fact that he is subject to grand mal seizures. Moore
15 also stated she talked to Steven Stone who admitted to her
16 that he had taped Sockpick.

17 4. On January 20, 1985, I conducted a taped
18 interview with Lori Duff, an employee of Harborview
19 Developmental Center. Duff stated that during the latter
20 part of October, 1984, she had observed Michael Sockpick
21 with masking tape wrapped about his head and face. Duff
22 stated that Sockpick's eyes and mouth were covered; she also
23 observed tape was around his neck and chest, with an armrest
24 from a wheelchair taped to his arm. Duff stated that while
25 she was in the room, she noted Sockpick to be making unusual
26 noises as though he was possibly having trouble breathing or
27 that he was extremely frightened. Duff further stated that
28 she felt Sockpick was placed in a potentially dangerous
29 situation due to the fact that he is subject to grand mal
30 seizures.

31 3 4 5
COUNTS 2, 24, 3, 34

32 5. On January 17, 1985, I conducted a taped
33 interview with Mary Mehlberg, an employee of Harborview
34 Developmental Center. Mrs. Mehlberg stated that during the

1 spring of 1983 she and Steven Stone were working in the
2 therapy pool at which time she observed Stone pull Michael
3 Sockpick and Luke Foley from their wheelchair and push them
4 into the water. Mrs. Mehlberg stated at this time neither
5 Sockpick nor Foley had a life jacket on. Further, that both
6 Sockpick and Foley are wheelchair patients and neither one
7 of them could have brought himself to the surface indepen-
8 dently or could float by himself without a life jacket.
9 Mehlberg stated that after Stone pushed the residents into
10 the water, he would go into the water and pull them out
11 after they had gone under. Mehlberg stated she felt this
12 was an extremely dangerous situation due to the potential
13 for drowning.

14 DATED this 10 day of June, 1985, at
15 Valdez, Alaska.

16
17 I. Sam Stone
18 Affiant

19
20 SUBSCRIBED and SWORN to before me this 10th
21 day of June, 1985.

22
23
24 James Christ
25 Notary Public for Alaska
26 My commission expires: 5/14/87
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PREVENTING ABUSE AND NEGLECT

VOLUME II

An Analysis of State Law and
Proposed Model Legislation



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Miami Shores, Florida



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Abuse and Neglect Prevention Research Project

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PREVENTING ABUSE AND NEGLECT
VOLUME II
AN ANALYSIS OF STATE LAW AND
PROPOSED MODEL LEGISLATION

By Jules Kerness

April, 1984

Barry University Abuse & Neglect Prevention Project

Harvey Abrams, M.S.W., Principal Investigator
Elane Nuehring, Ph.D., Research Coordinator
Marilyn Zuckerman, M.S., Senior Research Associate

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Services, Administration on Developmental Disabilities and
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TABLE OF CONTENTS

	Page
Acknowledgements	iv
I. Introduction	1
II. Protection of Disabled Adults	5
A. Characteristics of Abuse and Neglect Prevention Systems	5
B. Review of State Adult Protection Laws	12
C. Table of State Adult Protection Laws	37
III. Child Protection Laws	47
A. What Should Be Included	47
B. Strengths and Deficiencies	48
C. Directions for Change	53
IV. Conclusion: Model Statutory Protections Needed	56
A. Disabled Adults	56
B. Children	57
C. Proposed Legislation	58
V. A Model State Code for the Protection of Disabled Adults from Abuse and Neglect	61
A. Overview and Commentary	61
B. Model State Code	74

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Developmental Disabilities Law Project
Tom Birch, Legislative Counsel, National Child
Abuse Coalition

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Charles Kimber, Director, Developmental Services
Program Office (DSPO)
Bob Roberts, Director, Planning and Evaluation, DSPO
James Jolley, Supervisor, Abuse Registry

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Barry University Abuse and Neglect Prevention Project
Harvey Abrams, Principal Investigator
Elane Nuehring, Research Coordinator
Marilyn Zuckerman, Senior Research Associate
Jules Kerness, Program Consultant

PREVENTING ABUSE AND NEGLECT:

AN ANALYSIS OF STATE LAW AND PROPOSED MODEL LEGISLATION

I. INTRODUCTION

The problem of abuse and neglect of developmentally disabled residents of public and private institutions has been documented over the years in court cases, newspaper articles, special investigation reports and publications by advocacy organizations.* While many states have established mechanisms to protect such vulnerable persons from harm, these protections vary considerably in comprehensiveness, enforcement, and application from state to state.

In 1982, Barry University of Miami Shores, Florida, began an intensive study of one state's effort to protect developmentally disabled individuals from abuse and neglect, under a grant from the U.S. Department of Health and Human Services, Office of Human Development Services. The state was Florida, and the study included research on the administration of

*Developmental disability is defined by federal law (PL-95-602), Developmental Disability Act Amendments of 1978, as "a severe, chronic disability of a person which -

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age twenty-two;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated."

its Disabled Abuse Act, the operation of its Central Abuse Registry, and the delivery of training concerning abuse and neglect to staff of public and private residential facilities in Florida. An analysis was made of abuse and neglect reports over the last nine years, from nine selected residential facilities serving developmentally disabled persons. In addition to the information gathered in Florida, requests were made to the other forty-nine states for samples of exemplary training materials and administrative procedures from their abuse prevention systems. As part of the project, a survey was sent to the Protection and Advocacy Agency for Developmentally Disabled Persons (created pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act, P.L. 94-103) in each state, requesting information on the agency's activities in the area of abuse and neglect prevention and investigation. Reports on these various phases of the Barry University study have been completed.

This document represents one of the final products of the Barry project. It consists of (1) a comparative analysis of state laws which protect disabled persons from abuse and neglect, and (2) a model abuse/neglect reporting and protective services law based upon that analysis. Along with a staff training curriculum on abuse/neglect reporting, normalizing programs for developmentally disabled people, behavior management and aggression control techniques, the statutory analysis and model legislation will be disseminated throughout the fifty states and the District of Columbia to Governors' offices, state legislatures, developmental disabilities program offices, protection and advocacy agencies and others.

The analysis of state laws presented below is based upon a review of state statutes as of mid-1983. Legislative changes or new statutes being considered at the time of our search, may not be included in our analysis. We have attempted to locate all statutes on this subject, and we apologize if we have inadvertently overlooked any relevant legislation.

The first chapters of this monograph are devoted to analyzing existing state laws which provide for the protection of vulnerable individuals from abuse and neglect. Adult abuse and neglect reporting and protective service laws are discussed first. A presentation of recommended elements of such laws is made, followed by a review of the laws of the fifty states. A table charting provisions of adult abuse and neglect reporting and protective services laws by state, accompanies the analysis and provides information which allows for comparisons between and among states, as well as comparisons between individual states and the recommended elements.

A chapter on child abuse and neglect reporting laws reviews some of the extensive comparative literature already published in this field. It addresses itself to how existing laws in the fifty states comply with the recommended elements identified in the earlier discussion, and the extent to which existing laws provide coverage for children in residential care and for developmentally disabled children.

The monograph concludes with proposed model legislation for protection of disabled adults from abuse and neglect. Recommendations are also made for amending child abuse statutes

so as to improve protection of developmentally disabled children. The Barry University Abuse and Neglect Prevention Project offers these proposals in an effort to improve the quality of care and provide for the safety of all developmentally disabled individuals, particularly those in residential facilities.

II. PROTECTION OF DISABLED ADULTS

The purpose of this chapter is two-fold. First, it sets forth those statutory characteristics which, in the judgement of the Barry University Abuse and Neglect Prevention Project, are most significant and ought to be included in any state legislative scheme designed for the protection of adults against abuse and neglect. Second, the chapter reviews the adult abuse protection laws of the states, assessing how they measure up against our posited characteristics.

A. Characteristics of Adult Abuse and Neglect Protection Systems: What Should Be Included

A number of significant elements may be seen as constituting adequate abuse/neglect statutory protections. Identification of these elements is based upon review of state child protection statutes, which generally predate and often serve as the basis for adult abuse protection statutes; the Barry University analysis of state adult abuse reporting laws themselves; and similar studies of others.¹ The elements are:

(1) Clear operational definitions

(a) Abuse/Neglect. Definitions of abuse and neglect should be as specific as possible in delineating proscribed acts, giving little interpretative latitude to judges and administrators, and thereby minimizing inappropriate intrusions into individual privacy. Definitions also should not encompass more acts than the state's administrative mechanisms can deal with. And, for purposes of clarity and ease of administration, such definitions should not overlap one another - i.e., definitions of abuse should not embrace neglect.

(b) Applicability to Disabled, Including Developmentally Disabled Persons. Precise definitions of disability should make the protections granted by the statute applicable to the persons intended.

(c) Applicability of Statutory Protections to Persons Residing in the Community and in Institutional Settings. Protection against abuse and neglect should be afforded to all disabled persons, regardless of their circumstances of residence or conditions of care.

(d) Clear Definition of Persons Committing Alleged Acts of Abuse and Neglect. Statutory systems should make clear that suspected acts of abuse and neglect committed against the disabled person, by persons who are either voluntarily or by agreement responsible for the disabled person's care, should be reported and investigated, whether the care is provided in the disabled person's own home or in a residential facility, and whether or not the caretaker is related to the disabled person.

(e) Designation of Appropriate State and/or Local Agency Responsible for Investigation of Reports of Alleged Abuse and Neglect. Ideally, the agency investigating allegations of abuse and neglect should not, at the same time, be responsible for providing, supervising, or regulating care and services to the disabled person. (The National Center on Child Abuse and Neglect, as well as a number of state legislatures, have embraced this approach. See Chapter III for further details.)

(2) State Central Registry System

A twenty-four hour, seven-day a week toll free telephone hot

line should be established and connected to a state central register* of abuse and neglect, which would trigger investigation of alleged acts of abuse and neglect, as well as monitor and evaluate the conduct of investigations in order to assure the protection of disabled persons. Information held by the register, as well as all other person-specific data in states without registers, should be kept confidential, with access limited to a specific listing of approved persons and agencies, including, for example, courts, grand juries, and bona fide research organizations. The state law should also provide for expungement of identifying data in cases of unfounded reports, while maintaining aggregate data for statistical and analytical purposes; the sealing of records after appropriate time intervals; and fair hearing rights with respect to expungement, amendment, or sealing of records. Finally, appropriate penalties for releasing confidential information contrary to law, should be included.

(3) Mandated Reporters

All persons, including but not limited to all medical, social services, mental health, law enforcement and other professional personnel and agencies ordinarily coming into contact with disabled persons, including residential care staff, should be required to report all suspected cases of abuse and neglect, and appropriate penalties for non-reporting should be included in the state law.

* The terms registry and register will be used interchangeably throughout this monograph.

(4) Reporter Immunity from Liability

In order to encourage the maximum degree of good faith reporting under the statute, all persons reporting suspected cases of abuse and neglect should be held immune from any civil or criminal liability that might subsequently arise by reason of such action. Any individual suspected of abuse should not be granted immunity from liability.

(5) Specification of Contents of Abuse/Neglect Reports

The report of abuse and neglect, whether oral or in writing, should be as detailed as possible in order to facilitate speedy and efficient investigation. Such information as the following should be required by state law: the name and address of the person making the report, unless anonymity is desired; the name and address of the disabled person alleged to have been abused or neglected; identification of the person alleged to have committed the suspected act or acts, if known; identification of the caretaker of the disabled person, if different from the alleged abuser; information on the nature, extent of and circumstances surrounding the commission of the alleged acts; and information on prior acts of abuse and neglect. In addition, mandated reporters should be empowered, as appropriate, to take photographs and/or x-rays of areas of physical trauma as a necessary component of abuse reporting.

(6) Clear Reporting and Investigation Procedures

In order to encourage responsible, expeditious reporting, the state law should require the immediate filing of oral reports to the state central register. Written reports should

follow almost immediately (i.e., within 48 hours), in order to provide more complete information. Further, individuals who suspect that the death of a disabled person was due to abuse or neglect should file a report with a coroner or medical examiner, who should in turn report to law enforcement officials as appropriate. Investigation of reported acts of abuse and neglect should commence within twenty-four hours of the filing of the oral report, with provision for face-to-face contact with the disabled person in order to assure his or her personal safety. Investigation procedures should also include time limits (i.e., 90 days) to determine whether or not a report is "indicated" (i.e., that some credible evidence exists of the alleged act or acts of abuse or neglect).

(7) Education and Training of Reporters and Others; Cooperation of Other Agencies

The state law should incorporate provisions to encourage the reporting of suspected acts of abuse and neglect against disabled persons by requiring the state agency responsible for administering the disabled persons' protection system to conduct continuing publicity and educational programs for potential reporters, especially employees in residential institutions. In addition, the statute should provide for the cooperation of other state and local agencies in discharging the state agency's responsibilities under the adult protection statute.

(8) Emergency Intervention

The statute should provide for access to the disabled person

in cases of emergency, including judicial procedures to prevent the caretaker from interfering with the investigation of the alleged abuse or with the provision of emergency services.

(9) Specification of Protective Services

The state law should specify the protective services available to the disabled person, include a requirement to evaluate the need for care and services, and provide for securing appropriate services such as: residential care, financial benefits, medical services and supplies, legal services, and other protective services included in a state's Title XX comprehensive annual social services plan.

(10) Involuntary Service Provision, Due Process Protections

The state law should make clear that protective services are to be offered on a voluntary basis, unless the disabled person is deemed to lack the capacity to consent or is in immediate danger and is unable to protect himself. In such cases, protective services should be provided under appropriate judicial procedures, including provision for short-term (i.e., 72 hour) interventions, and with due process protections of the disabled person's civil and constitutional rights (notice of hearing, service of process, right to counsel, appointment of a guardian in appropriate circumstances, attendance at hearing, appeals, and the like). Further, in determining the need for involuntary services, the state law should require the courts to provide for and consider in so far as possible, a comprehensive evaluation of the service needs of the disabled person, and to order services and/or placements that are the least restrictive of the disabled

person's rights of self-determination, given the circumstances of the case.

B. Review of Adult Protection Systems: How the States Measure Up

Forty-four states have enacted either adult abuse reporting statutes or comprehensive adult protective services laws with due process protections of the rights of the disabled person. A breakdown of the provisions of these laws, by state, can be found in the Table of Adult Protection Laws, pages 37-39. The pattern of legislation in the states on this subject is as follows:

Ten state laws focus exclusively on the reporting and investigation of abuse and neglect:

Hawaii	Nevada	Oregon
Louisiana	New Jersey	Vermont
Minnesota	Ohio	Washington
Nebraska		

Three states have essentially protective services statutes:

Colorado	Maryland	Wisconsin
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Twenty-nine states include elements of both abuse and neglect reporting/investigation and protective services in their laws:

Alabama	Kentucky	North Carolina
Arizona	Maine	Oklahoma
Arkansas	Massachusetts	South Carolina
Connecticut	Michigan	Tennessee
Delaware	Mississippi	Texas
Florida	Missouri	Utah
Georgia	Montana	Virginia
Idaho	New Hampshire	West Virginia
Iowa	New Mexico	Wyoming
Kansas	New York	

Two state laws contain only civil and penal sanctions against abuse and neglect:

Indiana	Rhode Island
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Six states have no abuse and neglect reporting/investigation or protective services statutes:

Alaska	Illinois	Pennsylvania
California	North Dakota	South Dakota

(1) Definitions of Abuse and Neglect

Of the forty-four state laws with some variation of statutory provision governing the protection of adults from abuse and neglect, thirty-eight have incorporated definitions of or use the terms, "abuse" and "neglect". Common differentiation of the two terms lies in the treatment of "abuse" as an active verb (i.e., to injure or damage someone) and "neglect" as a passive one (i.e., failure to do something, to leave something undone). Confusion and subsequent hair-splitting arise because abuse may sometimes include the intentional failure to do or provide something to or for a disabled person, and chronic patterns of neglectful action may also constitute abusive behavior.

As a result of this problem in definition, many state laws in the survey do not include clear and unassailable differentiations between abuse and neglect, and it may be fairly argued that it is difficult to do so. However, an approach adopted by at least a dozen states is illustrated by the State of Mississippi's Adult Protective Services Act, Chapter 498 of the Laws of 1982, which defines abuse as:

the willful infliction of physical pain, injury or mental anguish on an adult, the unreasonable confinement of an adult or the willful deprivation by a caretaker of services which are necessary to maintain the mental and physical health of an adult. (Mississippi Statutes, Section 43-45-5)

Neglect is defined as:

the failure of a caretaker to provide the services which are necessary to maintain the mental and physical health of an adult. (Mississippi Statutes, Section 43-45-5)

The Mississippi definitions are useful although its neglect definition does not deal specifically with the treatment needs of adults, a significant concern, particularly with respect to

developmentally disabled adults. (This pattern is repeated in many states.) Further, the statute contains the term "mental anguish" but makes no attempt at definition. Also, Mississippi includes the term "unreasonable confinement" under the definition of abuse which is, again, not explained. Several other states surveyed also include "mental anguish" and "unreasonable confinement" under abuse/neglect definitions. Some states do attempt to define the variously used term "mental anguish", "mental injury" or "psychological injury". (See for example South Carolina's Client-Patient Protection Act of 1979, Section 43-30-10.)

Other states seek to skirt definitional problems by subsuming under a common umbrella term, all prohibited acts or omissions constituting abuse or neglect. An example of this pattern may be seen in the Oregon statute (Oregon Revised Statutes, Section 410.610) which states as follows:

'Abuse' means one or more of the following:

- (a) Any physical injury caused by other than accidental means, or which appears to be at variance with the explanation of the injury.
- (b) Neglect which leads to physical harm through withholding of services necessary to maintain health and well-being.
- (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.
- (d) Willful infliction of physical pain or injury.

The introduction of unusual and vague terms and conditions appears in the Oregon law with the reference to abandonment (again not substantially defined). Still other terms included in various statutory definitions are "intimidation", "maltreatment", "endangerment", and "self-neglect" (here, in an obvious attempt

to protect disabled persons unable to care for themselves). Also, sexual abuse occasionally appears in definitions of abuse and neglect. However, none of these terms appear in sufficient numbers of state laws, nor in sufficient explanatory detail, to merit generalization.

However, of the thirty-eight states which define the terms abuse and neglect, twenty-nine also incorporate the phrase "exploitation" as a grounds for seeking state protection (sometimes as part of neglect definitions). As opposed to abuse and neglect, this term is commonly defined among the statutes reviewed, although some exceptions did appear. For example, New Hampshire defines exploitation as "the illegal or improper use of an incapacitated adult or his resources for another's profit or advantage." (See New Hampshire Revised Statutes Annotated, Chapter 161-D.2.) Also, the Alabama definition describes exploitation as "An unjust or improper use of another person or another person's resources for one's own profit or advantage or for the profit or advantage of another person" (Alabama Code, Section 38-9-2).

(2) Coverage

(a) Age Groups

The laws of the states governing the protection of adults from abuse, neglect and exploitation differ as to the age limitations used to define adults. As may be seen on the accompanying Table, thirteen states specify coverage at any age; nineteen states cover adults age eighteen and over; and thirteen states provide protections from abuse and neglect to persons sixty years of age and older. Tennessee and Virginia cover certain adults and aged persons, depending on conditions of disability. Numbers may not add because of duplicative coverage.

(b) Disabilities

Of particular significance is the fact that states generally base their coverage for various age groups upon the nature and extent of specific disabilities. In addition to the developmental disabilities referred to in five state laws, twenty-seven statutes provide coverage to those with physical or mental disabilities or impairments. These include frailties, infirmities and diseases caused by advanced age, which make certain persons unable to protect themselves from abuse, neglect or exploitation by others. Other states, particularly those with strong adult protective services statutes, provide protective services to physically or mentally disabled persons, regardless of the incidence of abuse or neglect.

Most of the states which include mental and physical disabilities in their specified coverage have reasonably brief definitions of the disabled adult entitled to statutory protection. For example, the state of Michigan defines an "adult

in need of protective services" as a "vulnerable" person, which term is described as:

a condition in which an adult is unable to protect himself or herself from abuse, neglect or exploitation, or endangerment because of mental or physical impairment or because of the frailties or dependencies brought about by advanced age. (Michigan Compiled Laws Annotated, Section 400.11)

However, a number of states are more detailed in their definitions of mental and physical disability. For example, Delaware's statute encompasses:

any physical or mental disability and shall include, but not be limited to mental retardation, brain damage, physical degeneration, deterioration, senility, disease, habitual drunkenness or addiction to drugs, and mental or physical infirmity. (Delaware Code Annotated, Section 3902)

Similarly the State of Florida, whose statute covers the aged and disabled, defines a "disabled person" as:

any person who suffers from a condition of mental retardation, epilepsy, cerebral palsy, mental illness, or other disability which causes the person to be substantially unable to protect himself from the abusive conduct of others.

Further, an aged person is defined by the Florida law as a:

person suffering from the infirmities of aging as manifested by organic brain damage, advanced age, or other physical, mental or emotional dysfunctioning to the extent that the person is impaired in his ability to adequately provide for his own care or protection. (Florida Statutes Annotated, Section 827.09, Subdivision 2)

Similarly, the state of North Carolina defines "disabled adult" as:

one who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy, or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances. (General Statutes of North Carolina, Section 108A-101)

(c) Developmental Disabilities

Developmental disabilities, which, it can be argued are subsumed under some of the broadly-drawn definitions just cited are specifically referred to in only five state statutes (Colorado, South Carolina, Washington, Wisconsin and Wyoming). Three of them have comprehensive and specific definitions of developmental disabilities based upon the federal definition included in the 1975 Developmental Disabilities Assistance and Bill of Rights Act (P.L. 94-103). The 1978 federal amendments to this law (P.L. 95-602) revised the definition of developmental disabilities making it functional rather than categorical. This current definition is on page one of this monograph. The three similar state definitions based upon the earlier federal law are reproduced below.

Colorado:

'Developmentally disabled person' means a person with a disability attributable to mental retardation, cerebral palsy, epilepsy or neurological impairment which may originate during the developmental period, which can be expected to continue indefinitely, and which constitutes a substantial handicap. (Colorado Revised Statutes, Section 26-3-101)

South Carolina:

Developmentally disabled person means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy or other neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely and substantially impairs the individual from adequately providing for his own care or custody. (South Carolina Code, Section 43-29-10)

and Wisconsin:

'Developmentally disabled person' means any individual having a disability attributable to mental retardation,

cerebral palsy, epilepsy, autism or another neurological condition related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging. (Wisconsin Statute Annotated, Section 55.01)

The Washington statute covers only those developmentally disabled adults who have been adjudicated incompetent and in the Wyoming statute developmental disabilities are mentioned, but not defined.

(d) Specific Reference to Residential Institutions;
Definition of Caretaker.

Of the forty-four state laws, only nineteen have made specific reference to the abuse and neglect of persons in residential institutions. As indicated in the Table of State Laws, ten of the nineteen states have references to the care of adults in residential institutions of various sorts in their abuse/neglect reporting statutes. Specific statutory provisions of the other nine are indicated by footnotes to the Table. Four states (Arkansas, Maryland, New York and South Carolina) have enacted laws protecting adults in certain types of institutions, in addition to their abuse/neglect reporting and protective services statutes. In four states (Kansas, Minnesota, Mississippi and New Jersey) the only statutes this project could locate on this topic apply exclusively to adults in residential care institutions. One state, Montana, is in two categories with reference to adults in residential care, in its general statute as well as with separate statutory protections for

developmentally disabled persons in residential institutions.

Most states have incorporated fairly consistent definitions of caretaker of the disabled adult. The state of Kentucky is illustrative:

'Caretaker' means an individual or institution who has the responsibility for the care of the adult as a result of family relationship or who has assumed the responsibility for the care of the adult person voluntarily, or by contract or agreement. (Kentucky Revised Statutes, Section 209.020)

Similarly, the state of Georgia provides that a "caretaker" means:

a person who has the responsibility for the care of a disabled adult as a result of family relationship, contract, voluntary assumption of the responsibility, or by operation of law. (Georgia Code, Section 30-5-3)

The term "caretaker" has distinct usage in state law, particularly in the context of provisions establishing judicial interventions to prevent caretakers from interfering with investigations of abuse and neglect and/or the provision of protective services.

(3) Reporting and Investigation of Abuse and Neglect

(a) Central Registry System

Of the forty-four state laws, only fifteen statutes contain any provision relating to the establishment of a state central registry system to govern the reporting and investigation of allegations of abuse and neglect committed against adults. And few of these contain anything more than a passing requirement that a register system be created as a data source for cases of abuse and neglect. The state of Kansas is an exception and provides one of the better examples of a system that requires the maintenance of a "statewide register of the reports received, the findings, evaluations and the actions recommended" (Kansas Statutes Annotated, Section 39-1404).

Another exception is Florida which sets out comprehensive adult central registry provisions. It requires the establishment and maintenance of a:

central abuse registry which shall receive reports made pursuant to this section in writing or through a single statewide tollfree telephone number which any person may use to report known or suspected abuse, neglect, or exploitation at any hour of the day or night, any day of the week. The abuse registry shall be operated in such a manner as to enable the department [of Health and Rehabilitative Services] to:

1. Immediately identify and locate prior reports or cases of abuse, neglect or exploitation.
2. Regularly evaluate the effectiveness of the department's program for abused, neglected, or exploited persons through the development and analysis of statistical and other information. (Florida Statutes Annotated, Section 827.09, Subdivision 6)

Upon receipt of a report, the Florida registry is required to immediately notify local offices of the Department of Health and Rehabilitative Services about the report and any previous reports concerning the disabled person (Florida Statutes

Annotated, Section 827.09, Subdivision 6).

(b) Reporters

Thirty-seven of the state laws include some provision for mandatory or permissive reporting of allegations of abuse, neglect, or exploitation. Although there are variations (three states provide only for permissive reporting by any person; and sixteen states provide for mandatory reporting by any person) almost half of the state statutes embrace mandatory reporting requirements for specific groups of persons. The most frequently mentioned groups of mandated reporters include: physicians and related medical and health services personnel (twenty-four states); social services, mental health and other professionals (twenty states); and law enforcement officials (sixteen states). Only two states, Alabama and South Carolina, had a single group of required reporters - medical personnel. And where specific individuals are required to report, the state law usually also provides for permissive reporting by any person (fourteen states).

Requirements for mandatory reporting ordinarily would be deemed to supercede the privileged nature of communications between husband and wife and professionals and their clients, protected by state laws and professional practice. However, where required reporters are specified in state law, eleven states provide that the privileged nature of such communications, with the frequent exception of attorney-client communications, may not constitute grounds for failure to report or to otherwise cooperate under the statute.

(c) Reporting and Investigating Agencies

By far the most preferred statutory mechanism is to require reports of alleged acts of abuse, neglect and exploitation to be forwarded to and investigated by state and local social services agencies (thirty-three states have such a requirement and in eleven of these, reports can also be made to law enforcement officials). In thirty-one of the thirty-three laws the social services agency is the primary investigating body while in the other two states, the law enforcement agency is the investigating body. Further, law enforcement agencies also have investigatory roles in six of the states where the social service agency is the primary investigator, either as an alternative or supplement to the social services agency investigation.

In three states, reports of abuse and neglect are forwarded to an office for the aging and investigated by the same office, while in one other state, reports made to an office for aging are investigated by law enforcement officials. In a number of states, reports of abuse and neglect may also be made to such organizations as the state licensing agency, department of mental retardation, office of aging ombudsman, and designated private agencies.

It is noteworthy that two states, Nevada and Vermont, have enacted specific provisions to exclude investigations of abuse and neglect reports by the agency responsible for care or services to the disabled adult. The Nevada statute provides that:

If the report of abuse, neglect or exploitation involves an act of omission of the welfare division, aging services division or a law enforcement agency, the report must be

made to an agency other than the one alleged to have committed the act or omission. (Nevada Revised Statutes, Section 200.5093)

Similarly, Vermont law provides that:

If a report of abuse, neglect, or exploitation involves the acts or omissions of the commissioner of health [the designated investigating official] or employees of that department, then such reports shall be directed to the secretary of the agency of human services who shall cause the report to be investigated by staff of the departments of mental health, social and rehabilitation services or other appropriate staff other than staff of the department of health. (Vermont Statutes Annotated, Title 18, Section 1153)

(d) Immunities from Liability

Thirty-two states have enacted provisions granting immunity from liability in subsequent criminal or civil proceedings to persons reporting in good faith or otherwise cooperating under the statute. A number of states have qualified the granting of such immunities by exempting from the provision persons charged with or suspected of committing abuse or neglect. A few state laws are illustrative. The Arizona statute provides:

Any person making a complaint or providing information or otherwise participating in the program authorized by this chapter is immune from any civil or criminal liability by reason of such action, unless the person acted with malice or unless such person has been charged with or is suspected of incapacitating, abusing, exploiting or neglecting the adult in question. (Arizona Revised Statutes Annotated, Section 46-453)

Further, Idaho law contains the following provision:

Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or provision of services, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the case of provision of services, in the presence of gross negligence under the existing circumstances. (Idaho Code, Section 39-5203)

Of further significance, at least five states (Florida, Kansas, Massachusetts, Minnesota and Tennessee) have established what are known as "whistleblower" protections (i.e., protecting an employee reporting suspected abuse and neglect from any retaliatory action on the part of his or her employer). The Massachusetts statute is illustrative:

No employer or supervisor may discharge, demote, transfer, reduce pay, benefits or work privileges, prepare a negative work performance evaluation, or take any other action detrimental to an employee or supervisor who files a report in accordance with the provisions of this section by reason of such report. (Annotated Laws of Massachusetts, Chapter 19A, Section 15)

Other statutes contain provisions to enhance the enforceability of the whistleblower protection. The laws of Tennessee state that:

Any person making a report under the provisions of this chapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes a detrimental change in the employment status of the reporting party by reason of the report. (Tennessee Code Annotated, Section 14-25-105)

The state of Minnesota contains still other provisions designed to discourage retaliatory action. Minnesota code provides that any facility or person retaliating against the reporter, because of the making of the report, is liable for actual damages and, in addition, a penalty of up to \$1,000. Moreover, the statute states:

There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of a report, is retaliatory. For purposes of this clause, the term 'adverse action' refers to action taken by a facility or person involved in a report against the person making the report or the person with respect to whom the report was made because of the report and includes but is not limited to:

(1) Discharge or transfer from the facility;

- (2) Discharge from or termination of employment;
- (3) Demotion or reduction in remuneration for services;
- (4) Restriction or prohibition of access to the facility or its residents; or
- (5) Any restriction of [patient or resident] rights. (Minnesota Statutes Annotated, Section 626.557, Subdivision 17)

(e) Specification of Contents of Reports

Although twenty-six state laws provide for specification of the contents of abuse and neglect reports, the amount of required detail varies from state to state. Often, the statutory provision is very brief. The state of Alabama provides an example of one of the less comprehensive statutory requirements. A report, in this case the written report, is to contain only:

- a. Name, age and address of such person.
- b. Nature and extent of injury suffered by such person.
- c. Any other facts or circumstances known to the reporter which may aid in the determination of appropriate action. (Alabama Code, Section 38-9-8)

At the other end of the spectrum lie state laws like those of Arkansas which require that abuse/neglect reports:

include the following information: names and addresses of the next of kin or persons responsible for care, if known; the person's age, sex, and race; the nature and extent of the injury, sexual abuse or negligence, including any evidence of previous injury, sexual abuse or negligence to the person; the names and addresses of persons responsible for injury, sexual abuse, or negligence, if known; family composition; the source of the report; the person making the report; his reporting source, including the taking of photographs and x-rays, removal or keeping of the person of the abused adult or notifying the coroner, medical examiner, and other information that the person making the report believes may be helpful in the furtherance of the purposes of this Act. (Arkansas Statutes Annotated, Section 59-1309)

Although not necessarily the best statute that could be envisioned, the Arkansas law clearly requires the sort of elaborative detail needed to conduct an efficient, expeditious investigation in order to protect the allegedly abused or neglected person and, if warranted, to identify the need for and

provision of appropriate services.

The Arkansas statutory provision makes reference to two important investigatory procedures: the taking of photographs and x-rays, and reporting to coroners and medical examiners. Such provisions are required in a number of other state adult protection laws, and in more comprehensive child abuse reporting statutes. Indeed, Section 59-1307 of the Arkansas statute, authorizes the required reporter to obtain, at public expense, color photographs of areas of trauma and, if medically indicated, to obtain radiological examinations.

Further, this statute, like those of a number of other states, also provides that any required reporter who has reasonable cause to believe a person died as the result of abuse or neglect, must report such fact to the appropriate medical examiner or coroner who, in turn, must accept the report for investigation and report his findings to the police, the appropriate district attorney, and other designated officials (Arkansas Statutes Annotated, Section 59-1306).

(f) Reporting and Investigatory Requirements and Procedures

Although, as indicated above, a large proportion of the state laws specify the content of abuse and neglect reports, only nineteen states have established specific reporting and investigatory procedures in connection with adult abuse and neglect. And in many of these nineteen statutes specific, time-limiting, reporting and investigation procedures are lacking. Indeed, none of the states with reporting and investigating requirements approach the degree of accountability provided for

in a number of child abuse reporting laws, especially in regard to establishing time limits for the completion of investigations.

In the states with some statutory reporting and investigation provisions, there is usually a requirement for the immediate filing of an oral abuse/neglect report, followed by a written report, with no time limitation specified. In a few states, investigations must take place immediately upon the filing of an oral report, but the prevailing pattern is for "prompt and thorough" investigations (some states use the word "evaluation", usually to connote an emphasis on protective service provision) "as soon as is practicable". The prescribed contents of an abuse investigation are usually sparse. Several state laws simply require that an investigation include "a visit to the person and consultation with others having knowledge of the facts of the particular case" (Georgia Code, Section 3-5-5). However, two states (Arkansas and Michigan) have incorporated comprehensive provisions with respect to the contents of investigations. The Michigan statute reads:

The investigation shall include a determination of the nature, extent, and cause of the abuse, neglect, exploitation, or endangerment; examination of evidence; identification, if possible, of the persons responsible for the abuse, neglect, exploitation or endangerment; the names and conditions of other adults in the place of residence; an evaluation of the persons responsible for the care of the adult, if appropriate; the environment of the residence; the relationship of the adult to the person responsible for the adult's care; an evaluation as to whether or not the adult would consent to receiving protective services; and any other pertinent data.

.... The investigation shall include an interview with the adult. The county department shall conduct the interview by means of a personal visit with the adult in the adult's dwelling or in the office of the county department, by telephone conversation, or by any other means that may be available to the county department ... The investigation may include a medical, psychological, social, vocational,

and educational evaluation and review. (Michigan Compiled Laws Annotated, Section 400.11b)

State laws often require notification of law enforcement officials (coterminous with and/or after the completion of investigations), as appropriate, as well as medical examiners, and provide for the taking of photographs and x-rays. However, as noted above, in no state are time frames prescribed for the completion of an investigation, although Massachusetts law does require the establishment of administrative time limits for completion of "assessments and evaluations and for the implementation of service plans" and further provides that in the case of an emergency, assessments must be completed within 24 hours of the receipt of the abuse/neglect report (Annotated Laws of Massachusetts, Chapter 18).

Finally, the survey of state laws revealed that a number of states, to encourage the making of abuse/neglect reports, provide that the reporter be notified of the findings of an investigation after the investigation has been completed.

(g) Confidentiality Provisions

Twenty-seven states, with and without central registry systems, provide statutory assurances that records and reports identifying individual persons will be kept confidential. However less than half of these (eleven states) specify the individuals and agencies entitled to access to confidential information. A handful of states permit access only on court order. Although variations exist, groups that are most often given access include: persons and agencies carrying out abuse/neglect investigations; persons authorized to provide

placement or services to the disabled adult; agencies responsible for the care or supervision of the disabled adult; state officials administering the statute; any person who is the subject of an abuse/neglect report (the disabled adult or the alleged abuser); courts or grand juries which determine that such information is necessary for determination of issues before them; bona fide research organizations which, in no event may release identifying information; state and local prosecuting officials; and guardians or counsels of the disabled adults.

Some interesting variations may be noted. One state, Florida, specifically prohibits the release of the name of the reporter to any person other than employees of the state agency responsible for protective services, the state central registry, or the appropriate state attorney, without the written consent of the reporter. Release is permitted to such parties only when deemed necessary to protect an aged or disabled person with the further proviso that the name of the reporter may not be disclosed (Florida Statutes Annotated, Section 827.09).

The Florida statute further permits use of confidential central register records for purposes of screening persons applying for approval or licensure of a facility caring for aged or disabled persons. Similarly, the state of Washington permits use of central register records for such purposes as well as for pre-employment screening for persons providing care or treatment to disabled persons (Washington Revised Code Annotated, Section 26.44.070). In contrast, the state of Vermont specifically prohibits confidential records from being made available "for employment purposes, for credit purposes or to a law enforcement

agency other than the state's attorney" (Vermont Statutes Annotated, Title 18, Chapter 22, Section 1155).

Beyond provisions for accessing confidential records, the state adult protection statutes are remarkably deficient with respect to provisions for the amendment, sealing and expungement of records, as well as for fair hearings to challenge inappropriate state action relating thereto. Only six states have some statutory protections in this area and four of these have enacted only expungement provisions (generally related only to unfounded reports). One state, Minnesota, provides for the destruction of substantiated reports seven years after the date of final entry in the case record. Other, unsubstantiated reports may be kept for two years under certain circumstances (Minnesota Statutes Annotated, Section 626.557, Subs. 7,11).

In only two states, Arkansas and Nebraska, were comprehensive fair hearing provisions in evidence. The Arkansas statute is perhaps the most detailed and is quoted in part:

At any time, subsequent to the completion of the investigation, but in no event later than ninety (90) days after the receipt of a report, a subject of the report may request the Director of the Department to amend, seal, or expunge the record of the report. If the Director refuses or does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the Central Registry should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Act. The burden in such a hearing shall be on the Department and the appropriate adult protective services. Notice shall be given to all parties concerned, and in such hearings the fact that there was such a finding of adult abuse, sexual abuse, or negligence shall be presumptive evidence that the report was substantiated. (Arkansas Statutes Annotated, Section 59-1314)

(h) Penalties

Sixteen states have established misdemeanor penalties (generally \$500 fines or six months imprisonment) for failure to report as required by law. Additional misdemeanor penalties are prescribed in eleven states for intentionally making false reports, violating confidentiality provisions or otherwise violating provisions of the statute. Further, twelve states have included penalties for the commission of acts of abuse or neglect and eight of these have chosen to classify such acts as felonies.

In two of the states however, Indiana and Rhode Island, penalty provisions were the only statutory provisions for the protection of adults from abuse and neglect.

(i) Education and Training of Reporters and Others;
Cooperation of Other Agencies

In order to encourage and facilitate the reporting of abuse and neglect, it would seem appropriate that state laws incorporate provisions for the conduct of continuing education and publicity campaigns by the state agency responsible for administering the reporting and investigation statute. However, this provision was in evidence in only three states, Delaware, Minnesota and New Mexico. The Delaware statute contains only a general reference to citizen education programs concerning the needs of protective services clients and services available to them (Delaware Code Annotated, Section 3904). The Minnesota law is somewhat more targeted, requiring the commissioner of public welfare to establish an "aggressive program to educate those

required to report, as well as the general public about the requirements of this section using a variety of media" (Minnesota Statutes Annotated, Section 626.557, Subdivision 18). In New Mexico law, a public information program on adult abuse, neglect and exploitation, and the state's reporting and prevention system is required (New Mexico Statutes Annotated, Section 27-7-13).

To facilitate reporting, investigation and other responsibilities under law, twelve statutes contain reference to providing for and, in most cases, requiring the cooperation of other state and local, public and private agencies with the state agency responsible for the protection of adults, in the discharge of its duties.

(4) Protective Service Systems

(a) Specifications of Services

Of the state adult protection laws surveyed, thirty provide some specification of adult protective services for disabled adults, in functional terms, by the listing of discrete services, and/or by reference to applicable state laws or Title XX of the Federal Social Security Act. Services are referred to as "protective services", "essential services", "emergency services" as well as in other, like terms.

Services described in the state laws are sometimes limited to a few short phrases. Arizona defines protective services as:

a program of identifiable and specialized social services that may offer social services appropriate to resolve problems which have produced visible signs of incapacitation and abuse, exploitation or neglect. (Arizona Revised Statutes Annotated, Section 46.451)

Other state laws are more detailed. For example, the state of Florida defines protective services as:

those services, the objective of which is to protect an aged or disabled person. Such protective services shall include but shall not be limited to evaluation of the need for services, arrangements for appropriate living quarters, obtaining financial benefits to which the person is entitled, or securing medical and legal services. In those situations where exploitation, prevention of injury, and protection of the person and his property are at issue protective services shall include seeking the appointment of a guardian for the person or seeking protective placement. (Florida Statutes Annotated, Section 827.09, Subdivision 2)

Other illustrations, that detail discrete services, include the state of Delaware:

Protective services include but are not limited to:

- (1) Preliminary investigation and evaluation of reports of adults needing protective services, including a comprehensive social evaluation.
- (2) Medical and psychiatric evaluation, if necessary.
- (3) Social casework for the purpose of planning and providing services needed by the adult client.

- (4) Maintenance of the person in his own home through provision of home health care, homemaker services, day care and chore services.
- (5) Assistance in obtaining out-of-home services such as respite care, emergency housing, and placement in a rest-residential home.
- (6) Referral for legal assistance, information on establishing power of attorney or representative payee arrangements, and on guardianship of person or property; referral to the Office of Public Guardian; referral for medical assistance.
- (7) Transportation to and from service providers if necessary.
- (8) Other services consistent with this chapter.
(Delaware Code Annotated, Title 31, Section 3904)

(b) Involuntary Provision of Services; Emergency Intervention; Due Process Protection

More than half of the states (twenty-eight) contain provisions for the involuntary provision of protective services, including the ordering of protective placements, when the disabled person lacks the capacity to or is unable to consent to the provision of services. (In most state laws, protective services are otherwise offered and provided on a strictly voluntary basis.) In addition, twenty-four state laws contain provisions for emergency judicial intervention in order to protect the disabled person in imminent danger of serious harm or death. In such instances provisions are usually included for making short-term orders for services or placement (most often, for seventy-two hours) and for the filing of petitions for longer-term interventions, as appropriate. In such cases the laws also provide for judicial mechanisms to enjoin the caretaker from interfering with investigations and/or the provision of emergency services.

Within protective services proceedings, the laws in six states also provide that judicial orders be based on

comprehensive evaluation of the service needs of the disabled person, while ten statutes contain explicit reference to court-ordered services which are the least restrictive of the disabled individual's personal freedom and rights of self-determination. Indeed, several states explicitly provide that protective orders may not ordinarily commit disabled persons to mental institutions. Finally, in twenty-four state laws, due process protections are afforded the disabled person, generally including the appointment of counsel or guardian and, to greater and lesser extents in the various statutes, provisions for: notice of hearing; service of process; right to attend hearings, present evidence, cross-examine, and petition to set aside judicial orders; and appeals.

References Chapter II

1. See, especially: (a) Physical and Financial Abuse of the Elderly, Hearing before the Subcommittee on Retirement Income and Employment of the Select Committee on Aging, U.S. House of Representatives, Ninety-Seventh Congress, First Session, April 3, 1981, San Francisco, California. Committee Publication No. 97-297. Washington, D.C.: U.S. Government Printing Office, 1981.

(b) Elder Abuse: The Hidden Problem, A briefing by The Select Committee on Aging, U.S. House of Representatives, Ninety-Sixth Congress, First Session, June 23, 1979, Boston, Massachusetts. Committee Publication No. 96-220. Washington, D.C.: U.S. Government Printing Office, 1980.

(c) Elyse Salend, Rosalie A. Kane, Maureen Satz, and Jon Pynoos, Elder Abuse Reporting: Limitations of Statutes. Los Angeles, California: UCLA/USC Long Term Care Gerontology Center, 1983.

C. TABLE OF STATE ADULT PROTECTION LAWS

DEFINES	COVERAGE SPECIFIED						REQUIRED REPORTERS									
	Abuse/Neglect	Exploitation	Developmental Disabilities	No Age	Age 18 +	Age 60 + OR Disability	Other Conditions OR Disability	Residential Institutions	CENTRAL REGISTRY	Any person	Medical Personnel	Soc. Serv., Prof.	Law Enforcement	By Others	Permissive	Priv. Comm.
Alabama	x	x			x		x				x					x
Arizona	x	x		x												x
Arkansas	x	x			x		x	2	x		x	x	x	x	x	x
Colorado			x		x											
Connecticut	x	x				x	x		x		x	x	x	x	x	
Delaware					x		x			x						
Florida	x	x		x			x	x	x	x	x	x	x	x		x
Georgia	x	x			x		x			x						
Hawaii	x					x			x		x			x	x	x
Idaho	x	x				x				x						
Indiana	x						x									
Iowa	x	x		x					x							x
Kansas	x			x			x	3	x		x	x				x
Kentucky	x	x			x		x	x		x	x	x	x	x		x
Louisiana	x	x			x				x	x						
Maine	x	x			x		x	x			x	x	x	x	x	
Maryland				x			x	4								
Massachusetts	x					x			x		x	x	x	x	x	
Michigan	x	x			x		x	x			x	x	x	x	x	x
Minnesota	x				x		x	5			x	x	x	x	x	x
Mississippi	x	x			x			6		x						
Missouri	x	x				x				x						
Montana	x	x				x		7			x	x	x	x	x	x
Nebraska	x			x			x		x	x	x	x				
Nevada	x	x				x					x	x	x	x	x	x
New Hampshire	x	x			x		x		x		x	x	x	x		x
New Jersey	x	x		x				8	x	x	x	x				
New Mexico	x	x			x		x	x		x						
New York					x		x	9								
N. Carolina	x	x			x		x	x		x						
Ohio	x	x		x			x		x		x	x				x
Oklahoma	x					x	x			x						
Oregon	x					x			x		x	x	x			
Rhode Island				x			x									
S. Carolina	x	x	x	x			x	10			x					
Tennessee	x	x			x	x	x	x		x	x	x				x
Texas	x	x				x				x						
Utah	x	x			x		x	x		x	x	x				
Vermont	x	x				x		x	x		x		x	x		
Virginia	x	x			x	x	x				x	x	x	x	x	
Washington	x		x	x					x		x	x	x	x		
W. Virginia	x	x		x												
Wisconsin			x	x			x									
Wyoming	x	x	x		1		x	x								x
Total States	38	29	5	13	19	13	27	19	15	16	24	20	16	17	11	

	REPORT TO			INVESTIGATION BY				PENALTIES FOR							
	Social Service Agency	Law Enforcement Office	Aging Office	Other	Social Service Agency	Law Enforcement Office	Aging Office	Other	IMMUNITY FROM LIABILITY	REPORT CONTENTS SPECIFIED	REPORT PROCEDURES	CONFIDENTIALITY PROVISIONS	Failure to Report	Abuse/Neglect	Confidentiality/Other Violations
Alabama	x	x			x	x			x	x	x		x	x	
Arizona	x				x				x						
Arkansas	x				x				x	x	x	x	x	x	
Colorado															
Connecticut				x				14	x	x			x	x	
Delaware	x				x						x				
Florida	x				x				16		x	x	x	x	x
Georgia	x				x				x	x	x	x			
Hawaii	x				x				x	x		x			x
Idaho	x				x				x			x			
Indiana															x
Iowa	x				x				x						
Kansas	x				x				16	x	x	x			
Kentucky	x				x				x	x	x	x			
Louisiana	x	x			x	x	x	x		x	x		x		
Maine	x				x				x	x		x			x
Maryland															
Massachusetts				x			x	15	16	x	x	x	x	x	x
Michigan	x				x				x	x	x		x		
Minnesota	x	x		x	x			x	16	x		x	x	x	x
Mississippi	x				x				x	x			x	x	
Missouri	x				x					x					
Montana	x	x		x	x			x	x			x	x		x
Nebraska	x	x			x					x		x			x
Nevada	x	x		12	x	x		12	x	x	x	x			x
New Hampshire	x	11			x				x			x	x		
New Jersey	x				x			x	x	x	x	x			
New Mexico	x				x				x			x	x		
New York	x				x										
N. Carolina	x				x				x	x	x				
Ohio		x		x		x		x	x	x					
Oklahoma	x				x	x				x	x				17
Oregon	x	x			x	x			x	x	x	x			
Rhode Island															x
S. Carolina	x				x	x			x	x		x	x	x	x
Tennessee	x				x				16	x	x	x			
Texas				x			x		x	x	x	x			
Utah	x	x	x	x	x	x			x			x	x	x	
Vermont				13		x		13	x	x	x	x	x		x
Virginia	x				x				x		x	x			
Washington	x	x			x	x			x	x		x	x		x
W. Virginia												x			
Wisconsin															
Wyoming	x	x				x			x			x			x
Total States	23	12	4	6	31	10	4	9	32	26	19	27	16	12	11

	PROTECTIVE SERVICE SYSTEM						COOPERATION OF OUTIER AGENCIES, EDUCATION/TPMG, REPORTERS, ETC.	
	Specification of Services by Court Order	Involuntary Svc.	Least Restr. Svc.	Court Consider Eval. Svc. Consider	Due Process Protections Court Consider Needs	Emergency Inter- vention Proceed.		
Alabama	x	x	x	x	x	x		
Arizona	x							
Arkansas	x	x	x			x	x	
Colorado	x	x				x		
Connecticut		x				x		x
Delaware	x	x	x	x	x	x	x	
Florida	x	x					x	x
Georgia	x					x		x
Hawaii								
Idaho	x	x				x	x	x
Indiana								
Iowa		x				x		x
Kansas	x	x				x		x
Kentucky	x	x	x			x	x	
Louisiana		x						x
Maine	x	x				x	x	x
Maryland	x						x	
Massachusetts	x	x	x	x	x	x		
Michigan	x	x					x	x
Minnesota							x	x
Mississippi	x	x				x	x	x
Missouri	x	x				x	x	
Montana	x							
Nebraska								
Nevada	x							
New Hampshire	x	x						
New Jersey								
New Mexico		x					x	x
New York	x	x				x	x	
N. Carolina	x	x				x	x	x
Ohio							x	
Oklahoma	x	x	x	x	x	x		
Oregon								
Rhode Island								
S. Carolina	x	x	x	x	x	x		
Tennessee	x	x				x	x	
Texas	x	x				x	x	
Utah	x	x	x			x	x	
Vermont								
Virginia	x	x	x			x	x	
Washington								
W. Virginia	x	x				x	x	
Wisconsin	x	x	x	x	x	x		
Wyoming	x							
Total States	30	28	10	6	24	24	3	12

FOOTNOTES TO TABLE OF STATE ADULT PROTECTION LAWS

1. Age 16 or older
2. Not in general statute; separate statute prohibiting abuse of inmates in Arkansas State Hospital.
3. Statute applies exclusively to residents of adult care homes or certain medical facilities.
4. Not in general statute; separate statute for reporting of abuse of mentally retarded persons in residential facilities.
5. Statute applies exclusively to institutions.
6. Statute applies exclusively to residents of personal care homes.
7. In general statute; also separate statute prohibiting abuse of developmentally disabled persons in residential facilities.
8. Statute applies exclusively to residents of health care facilities, rooming houses or boarding houses.
9. Not in general statute; separate statute for reporting and investigating abuse of patients in residential health care facilities.
10. Not in general statute; separate statute for reporting abuse of patients or residents in institutions.
11. After working hours
12. County office of protective services
13. Department of health

14. Regional ombudsman
15. Designated public or private agency
16. Whistleblower protection included
17. Civil liability for false reporting

INDEX OF STATE STATUTES

<u>STATE</u>	<u>STATUTE</u>	<u>NAME OF STATUTE</u>
<u>Alabama</u>	Ala. Code ss 38-9-1 et. seq. (1977)	Protection of Aged Or Disabled Adults
<u>Arizona</u>	Ariz. Rev. Stat. Ann. ss 46-451 et. seq. (Supp. 1982-83)	Adult Protective Services
<u>Arkansas</u>	Ark. Stat. Ann. ss 59-601 et. seq. (1981)	Mistreatment of Incompetent Persons
	Ark. Stat. Ann. ss 59-1301 et. seq. (1983)	Abuse of Adults
<u>Colorado</u>	Colo. Rev. Stat. ss 26-3-101 et. seq. (1982)	Protective Services
<u>Connecticut</u>	Conn. Gen. Stat. Ann. ss 469-14 et .seq. (West 1977 & Supp. 1982)	Protection Of The Elderly
<u>Delaware</u>	Del. Code Ann. Tit. 31, ss 3901, et. seq. (1975 & Supp. 1982)	Adult Protective Services
<u>Florida</u>	Fla. Stat. Ann. ss 827-09 et. seq. (West. Supp. 1983)	Abuse, Neglect or Exploitation of Aged or Disabled Persons
<u>Georgia</u>	Ga. Code ss 30-5-1 et. seq. (1982)	Protection of Disabled Adults
<u>Hawaii</u>	Hawaii Rev. Stat. ss 349C-1 et. seq. (Supp. 1982)	Elderly Abuse or Neglect

<u>Idaho</u>	Idaho Code ss 39-5301 et. seq. (Supp. 1983)	Elderly Abuse, Exploitation, Neglect And Abandonment Reporting Act
<u>Indiana</u>	Ind. Code Ann. ss 35-46-1-1 et. seq. (Burns. Supp-1980)	Offenses Against The Family
<u>Iowa</u>	Iowa Code Ann. ss 235-B.1 et. seq. (1983)	Adult Abuse Services
<u>Kansas</u>	Kans. Stat. Ann. ss 39-1401 et seq. (1980)	Reporting Abuse or Neglect of Certain Persons
<u>Kentucky</u>	Ky. Rev. Stat. ss 209.010, et. seq. (1982)	Protection of Adults
<u>Louisiana</u>	La. Rev. Stat. Ann. ss 14:403.2 et seq. (West. 1982 Supp.)	Abuse and Neglect of Adults; Reports; Investigation; Central Registry; Waiver of Privileges; Penalties
<u>Maine</u>	Me. Rev. Stat. Ann. ss 3470 et. seq. (Supp. 1982)	Adult Protective Services Act
<u>Maryland</u>	Md. Ann. Code Art. 88A ss 106 et. seq. (1979 and Supp. 1982)	Adult Protective Act
	Md. Ann. Code ss 7-604 (1982)	Abuse Prohibited
<u>Massachusetts</u>	Mass. Ann. Laws Ch. 19A ss 14 et. seq. (Supp. 1982)	Abuse of Elderly Persons
<u>Michigan</u>	Mich. Comp. Laws Ann. ss 400.10 et. seq. (Supp. 1982)	Services To Adults And Aging Persons

<u>Minnesota</u>	Minn. Stat. Ann. ss 626.557 (1982)	Reporting of Maltreatment of Vulnerable Adults
<u>Mississippi</u>	Miss. Stat. ss 43-45-1 et. seq. (1982)	Adult Protective Services
<u>Missouri</u>	Mo. Rev. Stat. ss 660.250 et. seq. (Supp. 1982)	Protective Services For Adults
<u>Montana</u>	Mont. Code Ann. ss 53-5-101 et. seq. (1982)	Adult Services
	Mont. Code Ann. ss 53-20-163	Abuse of Residents Prohibited
<u>Nebraska</u>	Neb. Rev. Stat. ss 28-707 et. seq. (1982)	Offenses Involving the Family Relation
<u>Nevada</u>	Nev. Rev. Stat. ss 200.5091 et. seq. (1981 & Supp. 1983)	Abuse, Neglect and Exploitation of Older Persons
<u>New Hampshire</u>	N.H. Rev. Stat. Ann. ss 161-D:1 et. seq. (1981)	Protective Services To Adults
<u>New Jersey</u>	N.J. Stat. Ann. ss 30:1A-3 et. seq. (1979)	Suspicion of abuse or exploitation of resident of residential health care facility; report; immunity from liability for report or testimony; notice to ombudsman; evaluation; findings; recommended action; registry
<u>New Mexico</u>	N.M. Stat. Ann. ss 27-7-3 et. seq. (1984)	Adult Protective Services

<u>New York</u>	N.Y. Soc. Ser. Law ss 473 and 473-a et. seq. (McKinney Supp. 1982-83)	Adult Protective Services
	N.Y. Public Health Law ss 2803-d (McKinney Supp. 1982- 1983)	Reporting Abuses of Patients in Residential Health Care Facilities
<u>North Carolina</u>	N.C. Gen. Stat. ss 108A-99 et. seq. (1981)	Protection Of The Abused, Neglected or Exploited Disabled Adult Act
<u>Ohio</u>	Ohio Admin. Code ss 5123.61	Report Abuse or Neglect
<u>Oklahoma</u>	Okla. Stat. Ann. Tit. 43A ss 801 et. seq. (West 1980 Supp.)	Protective Services For The Elderly Act Of 1977
<u>Oregon</u>	Or. Rev. Stat. ss 410.610 et. seq. (1981)	Reporting Of Abuse Of Elderly Persons
<u>Rhode Island</u>	R.I. Gen. Laws ss 11-5-11 (Supp. 1982)	Assault On Mentally Retarded Persons
<u>South Carolina</u>	S.C. Code Ann. ss 43-29-10 et. seq. (1979)	Protective Services For Developmentally Disabled And Senile Persons
	S.C. Code Ann. ss 43-30-10 et seq. (1979)	Client-Patient Protection Act
<u>Tennessee</u>	Tenn. Code Ann. ss 14-25-102 et. seq. (1977 & Supp. 1982)	Adult Protection
<u>Texas</u>	Tex. Rev. Hum. Res. Code Ann. ss 48.001 et. seq. (1982)	Protective Services For the Elderly

<u>Utah</u>	Utah Code Ann. ss 55-19-1 et. seq. (1983)	Adult Protective Services
<u>Vermont</u>	Vt. Stat. Ann. Tit. 18 ss 1150 et. seq. (1979)	Report Of Abuse, Neglect and Exploi- tation of Older Vermonters
	Vt. Stat. Ann. Tit. 33 ss 3601 et. seq. (1968 & Supp. 1982)	Protective Services For Mentally Retarded Persons
<u>Virginia</u>	Va. Code ss 63.1-55.1 et. seq. (1983)	Protective Services For Aged And Infirm Persons
	Va. Code ss 63.1-55.2 et. seq. (1980 & Supp. 1983)	Protection Of Aged or Incapacitated Adults; Definitions
<u>Washington</u>	Wash. Rev. Code Ann. ss 26.44.010 et. seq. (1982)	Abuse of Children and Adult Develop- mentally Disabled - Protection - Procedure
<u>West Virginia</u>	W. Va. Stat. Art. 6 ss 9-6-1 et. seq. (1981)	Social Services for Adults
<u>Wisconsin</u>	Wisc. Stat. Ann. ss 55.001 et. seq. (West Supp. 1982)	Protective Service System
<u>Wyoming</u>	Wyo. Stat. ss 35-20-101 et. seq. (1983)	Adult Protective Services Act

III. CHILD PROTECTION LAWS

A. What Should Be Included

As indicated in the preceding chapter, ten major characteristics have been posited as necessary for the creation of an optimal statutory system designed to protect disabled adults from abuse and neglect. With the exception of the last two of these characteristics -- dealing with the provision of protective services to adults and with the invocation of judicial interventions with respect to involuntary protective services -- the remaining eight are equally applicable to state laws protecting children, including disabled children, from abuse and neglect.

To reiterate, such characteristics include:

- clear operational definitions (abuse/neglect; applicability of definitions to disabled persons; applicability of protections to persons residing in community or institutional settings; clear definitions of persons committing alleged acts of abuse and neglect);
- a state central registry system;
- a detailed listing of mandated reporters;
- provisions for reporter immunity from liability;
- specification of the contents of abuse/neglect reports;
- clear reporting and investigation procedures;
- provisions for emergency intervention; and
- provisions for the education and training of reporters and the cooperation of other agencies in implementing the state law.

And, obviously with respect to the provision of child protective services to the child and family, both voluntarily and within the context of judicial intervention, additional statutory provisions would need to be included to complete any scheme of state statutory protection for children.

B. Strengths and Deficiencies

Considerable research has been conducted in recent years to assess the comprehensiveness and adequacy of child abuse protection laws of the various states, and which may be used to generally compare existing state laws with many of the characteristics noted herein. Two such studies and their findings will be discussed here: a 1979 study by the U.S. Department of Health Education and Welfare (DHEW) and a 1980 study by the Ohio State University College of Social Work.

Of major significance is the 1979 DHEW study entitled Child Abuse and Neglect: State Reporting Laws.¹ It surveyed key elements of the child abuse and neglect statutes of the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico and the Virgin Islands in effect as of January 1, 1979, and points to growing trends in the development of increasingly comprehensive state child abuse protection laws during the decade of the 1970's:

Most prominent among these [trends] is the expansion of the categories of mandated reporters and a broadening of the concepts of reportable abuse and neglect. Another trend shows the extension of immunity to reporters and the imposition of criminal and civil sanctions for failure to report. A growing number of states now are directing reports of abuse and neglect to social services agencies and mandating the operation of central registries, with specific requirements for access to records and penalties to ensure confidentiality. Another significant trend in this area is the

legislative requirement that a guardian ad litem be appointed by a court to independently represent the best interest of the child in abuse and neglect proceedings. States also have begun, through their legislation, to mandate or encourage the use of multidisciplinary child protection teams. 2

Within this summary context, the federal review of state laws indicates that comprehensive protections of children against abuse and neglect are not always uniform among states. Utilizing the major characteristics of abuse and neglect protection laws posited above, the findings of the HEW study followed by those of the Ohio State study and other research are presented below.

(1) Definitions

(a) Statutory definitions of abuse and neglect, as in the adult abuse protection statutes reviewed earlier in this report, are widely disparate and often replete with vague terminology.

(b) While the vast majority of jurisdictions set the age limit for reportable children at 18 years or younger, only a small handful make any specific reference to disabled children.

(c) With respect to investigation of institutional abuse and neglect, sixteen states and four jurisdictions have developed legislation to insure independence in investigations, and others have adopted administrative procedures to implement this standard.

(2) Central Registry System

(a) Forty-four jurisdictions have provided for some sort of statutory central registry system (and seven others maintain registers as matters of administrative policy), with considerable variation as to what categories of information are placed in the registry. 3

(b) A majority of states have statutory provisions declaring the confidential nature of child abuse records, typically establishing misdemeanor penalties for breach of confidentiality provisions (federal requirements in order for a state to qualify for grants). State codes usually regulate access to child abuse and neglect records to specified groups of individuals and agencies (similar to those described above in adult abuse reporting statutes).

(c) Twenty states with central registries provide in their reporting laws for destruction, sealing, expungement or amendment of information in these data systems. Circumstances necessitating such action vary from state to state, and only a few jurisdictions require that persons listed in the central registry be told they are in the data system.

(d) Some ten jurisdictions give subjects fair hearing rights with respect to requests for amendment, sealing or expungement of records.

(3) Reporters

(a) The majority of states provide for mandatory reporting of abuse from teachers and other school personnel, physicians, nurses, other medical and social services personnel and similar professionals; and more than half of the jurisdictions require reporting from coroners or medical examiners. Further, nineteen jurisdictions mandate "any person" or "any other person" to report; and thirty-two jurisdictions provide specific authorization for permissive reporting of child abuse and neglect.

(b) The states provide for the abrogation of privileged

communications in varying patterns, although the majority provide for abrogation of the physician-patient and husband-wife privileges.

(c) Forty-five jurisdictions impose penalties for failure to report child abuse and neglect.⁴

(4) Immunity from Liability

Consistent with eligibility requirements for state grants under the federal Child Abuse Prevention and Treatment Act, all fifty-five jurisdictions grant civil or criminal immunity from liability for the making of a report. Most jurisdictions provide additional immunity for participating in judicial proceedings resulting from the report.

(5) Reporting and Investigation Procedures

(a) Some twenty-six states provide for the taking of photographs or x-rays of injury to a child.

(b) Although most states provide statutory reporting and investigation procedures, there is considerable variation (also found in adult abuse reporting laws) in time frames and specificity required "although the trend in recent years has been to develop specific guidelines for the investigation".⁵ However, more than twenty-five jurisdictions currently name the state or local social services department as the sole receiver of child abuse reports.

(6) Education and Training of Reporters

A growing number of jurisdictions have statutory provisions providing for the education and training of reporters and for the

development of public information programs about child abuse and neglect.

(7) Emergency Intervention

Most jurisdictions authorize police to remove from the home a child in imminent danger of extreme abuse. A growing number of states extend this protective custody power (usually for only 24 to 72 hours, or until the next session of a family or juvenile court) to child protection agencies and hospitals.

(8) Due Process

The states provide, in varying degrees, for the appointment of a counsel or guardian ad litem to represent the interest of the child in court proceedings, and for legal representation for indigent parents and child protection agencies.

(9) Protection of Children in Institutions

Against this background, the Ohio State University College of Social Work undertook a 1980 study of state child abuse statutes and state licensing requirements with particular emphasis upon the protection of children in residential institutions.⁶ The study found very limited recognition of the existence of the issue of child abuse within state licensing statutes and regulations. With respect to state child abuse reporting statutes themselves, the Ohio State group discovered a similar pattern: state laws traditionally emphasize protection of children from intrafamilial abuse and neglect (with courts interpreting such coverage as generally applicable only to family settings). And, in this context, only fourteen states have

included abuse of children in residential institutions within their systems of statutory protections.

(10) Recognizing the Treatment Needs of Disabled Children

Our own review of state child protection laws as of mid-1983 revealed another disturbing characteristic (also in evidence, in varying degrees in the adult abuse laws as described above). Statutory definitions of child neglect generally speak in terms of the deprivation of food, shelter, medical care and services required for the health and welfare of the child. However, the laws do not specifically recognize the treatment needs of disabled, including developmentally disabled, children.

One state, Mississippi, in its Youth Court Act (Section 43-21-1-5) does contain a definition of neglect which looks to the treatment needs of the disabled child although it is not tailored specifically for the developmentally disabled child. It provides in part, that a neglected child is one:

who for any reason, lacks the special care made necessary for him by reason of his mental condition whether said mental condition be mentally retarded or mentally ill...

C. Directions for Change

The laws of all fifty states do provide some measure of protection for children against abuse and neglect, unlike the states' less comprehensive record in the protection of disabled adults. However, to remedy the omissions and deficiencies indicated above, state child abuse laws can, in varying degrees, be strengthened through amendments to include many of the provisions of the model code for the protection of disabled

adults presented later in this report.

In offering a model statute, the Barry University Abuse and Neglect Prevention Project is cognizant that an excellent model for child abuse reporting legislation has already been advanced by the National Center on Child Abuse and Neglect (NCCAN).⁷ However, our code will differ from the NCCAN model in several respects, and state legislatures may utilize elements of each to improve their statutory protections of children against abuse and neglect.

References Chapter III

1. National Center on Child Abuse and Neglect, Child Abuse and Neglect: State Reporting Laws. DHHS Publication No. (OHDS) 80-30265. Washington, D.C.: U.S. Department of Health, Education and Welfare, December, 1979.
2. Ibid., p. 27.
3. The report also noted: "Proponents of the central registry, however, acknowledge the widespread failure of the systems in fulfilling their 'diagnostic, case monitoring and statistical functions'." Ibid., p. 20.
4. The report notes however: "Despite the widespread provision of penalties, there are no reported cases of a criminal prosecution for failure to report an abused or neglected child." Ibid., p. 15.
5. Ibid., pp. 18 - 19.
6. Nolan Rindfleisch, Beverly Toomey and Rhonda R. Rivera, Child Abuse/Neglect In Residential Facilities: The Law And The Courts. Columbus, Ohio: Ohio State University, College of Social Work, NCCAN Grant No. 712664, 1980.
7. National Center on Child Abuse and Neglect, Child Protection: A Guide For State Legislation. Washington, D.C.: U.S. Department of Health and Human Services, 1983.

IV. CONCLUSION: MODEL STATUTORY PROTECTIONS NEEDED

A. Disabled Adults

The statutes of the states as described in this study, fail to uniformly protect disabled adults from abuse and neglect. What has been revealed by the statutory analysis is that state laws:

1. often contain imprecise and overlapping definitions of abuse and neglect;
2. fail to cover all age groups in many cases;
3. extend coverage to disabled adults, but define disabilities with varying degrees of comprehensiveness;
4. rarely make specific reference to developmentally disabled adults;
5. make statutory protections applicable to adults in residential care institutions less than half the time;
6. infrequently contain requirements for a state central registry system and even when required, rarely contain comprehensive procedures for the operation of such a system;
7. usually include listings of mandated reporters;
8. generally specify that social services agencies receive and investigate reports of abuse and neglect but rarely contain provisions to avoid self-investigation;
9. generally include provisions granting reporters immunity from civil and criminal liability by reason of good-faith reporting and in several cases, contain "whistleblower" protections;

10. do not consistently require detailed abuse and neglect reports or comprehensive and specific reporting and investigation procedures;
11. usually provide for the confidentiality of identifying information but do not consistently include procedures for gaining access to confidential information, and only rarely contain provisions relating to amendment, sealing and expungement of records, and fair hearings relating thereto;
12. less than a third of the time, provide misdemeanor penalties for failure to report or for the commission of acts of abuse and neglect;
13. rarely mandate the education and training of required reporters, or the cooperation of appropriate state and local agencies in implementing the adult protection statutes;
14. usually specify services to protect disabled adults from abuse and neglect; and
15. approximately, half of the time, contain provisions for involuntary protective services by judicial order, and in varying degrees, provide for emergency intervention with due process protections.

B. Children

Child abuse protection statutes have also been shown to include a number of significant deficiencies, namely failure to include institutional care within the purview of state protective efforts or to specify the treatment needs of developmentally disabled children within definitions of neglect. Such matters are deserving of consideration by the states in evaluation of

their child protective services statutes which, for the most part have been uniquely designed to protect the child and provide supportive and rehabilitative services to the family, either voluntarily or through appropriate court intervention. As such, attention to the protection of developmentally disabled children from abuse and neglect must be met within the context of such statutes and not through adult protection laws.

C. Proposed Legislation

The remainder of this monograph will set forth a model state code for the protection of disabled adults from abuse and neglect. It is a model cognizant of the strengths and deficiencies of existing state laws governing the protection of both children and adults and draws upon the best examples, in the judgement of the Barry University Abuse and Neglect Prevention Project, of these existing state laws and already published model statutory systems.

The decision was made to draft a model statute which provides protection from abuse and neglect for disabled adults rather than for adults and children for several reasons.

First, as discussed earlier, all fifty states have legislation mandating the reporting of child abuse and neglect. While some of these statutes may not provide coverage to children in residential institutions, or specify the special needs of developmentally disabled children, still the framework of legislation is already in place. What is needed in such states is not new legislation, but rather amendments to expand coverage. The model law we are proposing in this monograph does

offer definitions and other provisions which may be used to amend present child abuse reporting laws.

Secondly, the National Center on Child Abuse and Neglect has a model child abuse reporting law which can suggest language and other provisions to meet certain state needs for legislative improvement.

Further, while fifty states have child abuse and neglect reporting laws, only forty-four have some kind of adult abuse coverage, and many of those are lacking in several of the recommended characteristics of such laws. Moreover many states only cover persons over age sixty or have otherwise limited coverage. Thus, we feel the need is greater for an abuse and neglect reporting/protective services statute which covers disabled adults.

Lastly, we felt we could not recommend one statute to cover both children and adults, because the protective services provisions and judicial remedies and protections in such legislation would be significantly different for children and adults.

In drawing the code, major emphasis has been placed not only upon clarity and comprehensiveness in detailing statutory provisions to protect disabled adults, but also upon their potential for enforcement given practical, fiscal and state of the art considerations among the states.

It is the intention of the Barry University project to recommend needed legislation which will provide protections from abuse and neglect for all developmentally disabled individuals, both children and adults. While offering a complete disabled

adult statute, we are meeting a need existent in many states across the country. To improve child abuse reporting statutes so as to adequately cover developmentally disabled children and particularly those in residential care, we refer legislators to both the model child abuse reporting legislation developed by the National Center on Child Abuse and Neglect referenced earlier, or to those portions of the legislation proposed in this monograph which are appropriate and applicable.

V. A MODEL STATE CODE FOR THE PROTECTION OF DISABLED ADULTS
FROM ABUSE AND NEGLECT

A. Overview and Commentary

The following model state code draws to a significant degree upon the experience of the states as set forth in earlier chapters. Its focus, as stated in section two of the code, is clearly to facilitate the expeditious reporting and investigation of suspected cases of abuse and neglect of disabled adults as well as to provide protective services consonant with the rights of the individual. Sufficient statutory detail has been included in the code to clearly guide, and limit, state rule making.

It should be noted that experience under child protective reporting laws in the states as well as a growing body of professional literature argue in favor of a strong statutory reporting system as a powerful tool to protect vulnerable individuals against abuse and neglect.¹ The existence of mandatory reporting requirements and procedures combined with public education and an efficient state central register system, are believed to encourage the fullest degree of reporting of abuse and neglect as well as the provision of needed protective services. It is for these reasons that our model code contains as it does a heavy emphasis upon the reporting and investigation of abuse and neglect.

(1) Definitions

Section three of the code, the definitions section, presents many of the ground rules for the ensuing statutory materials and

is significant both for its inclusions and omissions.

Definitions of abuse and neglect have been developed with a view to avoiding vague and often confusing terms found in present state laws. Narrowly constructed definitions are presented to facilitate interpretation and administration and, consequently, the protection of disabled adults. In particular, the abuse definition covers only the infliction of physical injury affecting the person's physical or emotional condition (terms which are defined in section three, subdivisions two and three). It does not include non-physical injury as embraced by such terms as "verbal abuse" or "harassment" found in some state laws. These terms are difficult to define and enforce within the context of a state reporting law. Where they have not already done so, states are encouraged to develop and implement appropriate administrative mechanisms for state operated, licensed or regulated facilities, programs and services to prevent and remediate such practices.

Similarly, the model code sets forth a fairly rigorous definition of neglect phrased in the context of failure to provide care and service necessary to maintain the physical and mental health of the disabled adult. Of significance, the neglect definition clearly includes the failure to provide the special care, treatment and supervision which may be required for the disabled adult. The code excludes from the definition of neglect the term "self-neglect", nor does the definition section embrace "exploitation". These terms, although important and certainly deserving of state intervention, are also difficult to

interpret and enforce and, indeed, are better addressed elsewhere in state law and regulation.

Pursuant to subdivisions six and seven of the definitions section of the code, the term disabled adult is defined to include persons over eighteen years of age who suffer from a broad range of enumerated disabilities, including developmental disabilities, which are themselves defined drawing upon federal law.

As provided in subdivision four, the focus of the statute is upon abuse and neglect of disabled adults by persons and agencies responsible for their care. In this context, the phrase "caretaker" has been employed to encompass all relevant individuals, agencies or organizations providing care and services to the disabled adult. While the definition is broad in and of itself, expansion of coverage to include such situations as abuse of disabled adults in residential settings by other disabled residents, was considered administratively inappropriate and is clearly not intended.

Designating a state agency to be responsible for implementing the reporting, investigation and protective services provisions of the statute, as set forth in subdivision five, presents conceptual difficulties. Typically, the reference here should be to the state social services agency, called the department of public welfare, the department of health and welfare, the department of human resources, or the like. Furthermore, so as to avoid the problems inherent in any system of self-investigation, the statute should specify that the state agency responsible for administering the abuse reporting and

investigation system cannot be the agency that provides residential care and services to the disabled adult.

Ideally we would prefer to see the creation of a separate state agency to investigate abuse and neglect. Such an agency should be independent of any existing state department which operates, supervises or otherwise regulates the provision of residential care or services to disabled adults. However, this goal is difficult to attain, particularly in larger states, given existing variations in state organizational practices and the significant level of expenditures which would be required to establish an effective independent investigative body. Consequently, the model code is silent on this issue, although it is hoped that the states over time will strive to amend their laws to achieve this objective.

Also, the code does not prescribe a specific organizational pattern for the reporting and investigation of abuse and neglect or for the delivery of protective services. Again, variations in state administrative networks mitigate against any particular, uniform approach, and it also may be argued that legislating in this area may represent an unwarranted intrusion upon executive prerogatives. In any event, we would hope that whatever organizational system is established will facilitate, probably through the use of regional, county or other local offices, the objectives of expeditious investigation of abuse and neglect and the provision of protective services.

Further, with respect to the investigation of reports of abuse and neglect, subdivisions eight and fifteen define an

"indicated" report as one for which an investigation determines there is some credible evidence of the alleged abuse or neglect; similarly, "unfounded" reports are those which do not meet this test. Within this model statute, we have used this credible evidence standard rather than a higher, more exacting standard of judicial proof (i.e., clear and convincing evidence or preponderance of the evidence). This is because the code is designed to trigger, as the result of investigation of suspected cases of abuse or neglect, the provision of protective services to disabled adults and does not, as described below, invoke penal sanctions against an individual (which would require a higher standard of proof).

Finally, subdivision eleven contains a broadly constructed definition of protective services, embracing a wide range of enumerated services to protect disabled adults from abuse and neglect.

(2) Reporters and Reports

The model code requires all persons coming into contact with the disabled adult to report suspected cases of abuse and neglect. In addition, to facilitate reporting and accountability, the model code includes a non-exclusive listing of reporters such as medical and health officials; social services, mental health and other professionals; law enforcement officials; and the like. It also provides for anonymous reporting so as to encourage reports that might otherwise not be made. Anonymous reporting was found to be a valuable source of indicated reports by Barry University's study of abuse and neglect reports in Florida.² The

contents of abuse and neglect reports are set forth in detail and provision is also made for the taking of photographs, as well as x-rays by medical and other health service professionals, as appropriate. The code requires a reporter who suspects a disabled adult has died as a result of abuse or neglect to notify the appropriate medical examiner who, in turn, must report his findings to the police, the appropriate state or district attorney, and other officials. Persons reporting in good faith are granted immunity from civil or criminal liability which may result by reason of their actions, as are persons providing protective services or otherwise cooperating under the provisions of the act. Requirements to report under the act should be expected to generally supercede privileged communication requirements extant in state law and professional practice.

(3) Whistleblower Protections

The model code incorporates detailed provisions found in a number of state laws prohibiting retaliatory action on the part of an employer against any employee filing a report under the act. It provides that reporters will have a civil cause of action for appropriate damages against any person engaging in enumerated retaliatory practices and establishes a rebuttable presumption that any such detrimental changes in a person's employment status, if made within 90 days of the filing of a report, are retaliatory.

(4) Penalties for Failure to Report; No Penalties for Abuse/Neglect

The act provides that persons failing to report suspected

cases of abuse or neglect of disabled adults will be guilty of a misdemeanor. It does not contain sanctions against persons committing acts of abuse or neglect. We wish to emphasize that the model code set forth in this report is intended as a non-punitive statute and has as its focus the reporting and investigation of abuse and neglect and the delivery of protective services to disabled adults in appropriate cases. In this context, to include appropriate judicial standards of proof commensurate with penal law sanctions, as well as the criminal sanctions themselves, would be at direct odds with our intended focus.

Furthermore, when sanctions against abuse or neglect need to be invoked, state penal statutes can and should be utilized. They generally embrace acts of abuse or neglect under such terms as assault, battery, endangerment, rape and the like. Where state penal codes are not sufficient, particularly with respect to "lesser" acts of abuse or neglect (i.e., slaps and pinches rather than aggravated assault; failure to provide high quality care and services rather than the absence of specific care or services) state administrative systems designed to regulate the provision of care and services to disabled adults should ordinarily establish and enforce standards of practice through the use of such tools as supervision, technical assistance, training, discipline, transfer, and dismissal. When necessary, states should look to the improvement of both their penal statutes and administrative regulations in order to establish and enforce appropriate sanctions against abuse or neglect.

(5) Reporting and Investigating Procedures

The model code prescribes detailed time-limited reporting and investigation procedures including the immediate filing of oral reports and filing of written reports within forty-eight hours of oral reports. Further, investigations must commence within twenty-four hours of the receipt of the report. The investigation must include a comprehensive review of the cause, nature and extent of the suspected abuse or neglect; must provide for an interview with the disabled adult; and may, if determined necessary for the protection of the disabled adult, include medical, psychological, social, vocational and educational evaluation. Within ninety days of the receipt of a report an investigation must determine whether the report is "indicated" or "unfounded".

(6) State Central Register

The model statute provides for the establishment of a state central register of adult abuse and neglect capable of receiving reports of abuse and neglect, of identifying prior reports and of monitoring the provision of protective services to disabled adults twenty-four hours a day, seven days a week. States may wish to expand the scope of existing child abuse registers for this purpose. To effectuate these objectives, a single state-wide toll free telephone number is required for the register. Abuse/neglect reports and other information in the possession of the state department are treated as strictly confidential and are to be made available only to a specified list of persons as detailed in subdivision five of section twelve