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## POTENTIAL FOR SELF-REPORTING OF OLDER ADULT MALTREATMENT: AN EMPIRICAL EXAMINATION

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Joseph A. Hamm*

*This Article examines state statutes providing for the mandatory reporting of older adult maltreatment. These statutes are important in protecting older adults from potential victimization at the hands of both formal and informal caregivers. Nevertheless, Professor Brank, Ms. Wylie, and Mr. Hamm argue that these statutes undermine older adults' autonomy and individual decision making because the statutes are modeled off the parens patriae framework of child maltreatment statutes. The authors believe these statutes effectively disempower older adults because older adults, unlike children, should be considered competent decision makers unless adjudicated otherwise. The authors contend that this system is the product of im-*

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properly tailored models as well as ageism. To cure this ill in state maltreatment statutes, the authors argue that states could amend their statutes to place responsibility on older adults to self-report abuse. To further this contention, the authors developed a novel empirical study to examine how likely a sample of older adults would be to self-report maltreatment, under what circumstances they would be more likely to report, and to whom they would report. The study results demonstrate that older adults are capable of recognizing and willing to report abuse in both formal and informal caregiver situations. The authors posit that this is strong evidence that older adult maltreatment could be better addressed through empowerment of older adults rather than borrowing from the child abuse system that further disempowers them.

## I. Introduction

Older adult maltreatment is a growing problem related to the increase in the older adult population<sup>1</sup> and their often resulting need for care.<sup>2</sup> Precise statistics on the prevalence of older adult maltreatment are unknown for several reasons. Specifically, definitions of maltreatment vary,<sup>3</sup> there is no uniform reporting system,<sup>4</sup> and under-reporting is likely.<sup>5</sup> Best estimates suggest that between one and two million adults over the age of sixty-five have been subjected to older adult abuse or neglect;<sup>6</sup> financial abuse of

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1. See Admin. on Aging, *Aging Statistics*, DEP'T HEALTH & HUM. SERVS. (Sept. 9, 2011, 1:17 P.M.), [http://www.aoa.gov/aoaroot/aging\\_statistics/index.aspx](http://www.aoa.gov/aoaroot/aging_statistics/index.aspx). People sixty-five years of age or older numbered 39.6 million in 2009 and represented 12.9% of the U.S. population. *Id.* By 2030, there will be about 72.1 million older persons, which will be nineteen percent of the population. *Id.* See generally MELONIE HERON ET AL., NAT'L VITAL STATISTICS REPS., DEATHS: FINAL DATA FOR 2006 (2009).

2. ARI HOUSER ET AL., AARP PUB. POL'Y INST., TRENDS IN FAMILY CAREGIVING AND PAID HOME CARE FOR OLDER PEOPLE WITH DISABILITIES IN THE COMMUNITY: DATA FROM THE NATIONAL LONG-TERM CARE SURVEY 1 (2010).

3. We use the term "maltreatment" instead of abuse as a way to also include neglect.

4. NAT'L CTR. ON ELDER ABUSE, FACT SHEET: ELDER ABUSE PREVALENCE AND INCIDENCE 1 (2005), available at [http://www.ncea.aoa.gov/NCEARoot/Main\\_Site/pdf/publication/FinalStatistics050331.pdf](http://www.ncea.aoa.gov/NCEARoot/Main_Site/pdf/publication/FinalStatistics050331.pdf).

5. ADMIN. FOR CHILDREN & FAMILIES & ADMIN. ON AGING, DEP'T OF HEALTH & HUMAN SERVS. NAT'L CTR. ON ELDER ABUSE INCIDENCE STUDY 4 (1998) [hereinafter INCIDENCE STUDY], available at [http://aoa.gov/AoA\\_Programs/Elder\\_Rights/Elder\\_Abuse/docs/ABuseReport\\_Full.pdf](http://aoa.gov/AoA_Programs/Elder_Rights/Elder_Abuse/docs/ABuseReport_Full.pdf). It is estimated that for every one case of elder abuse, neglect, exploitation, or self-neglect reported to authorities, about five more go unreported. *Id.*

6. NAT'L CTR. ON ELDER ABUSE, *supra* note 4, at 1. The rate rises even higher if self-neglect is included. *Id.*

older adults claims five times that amount.<sup>7</sup> Although media<sup>8</sup> and legal<sup>9</sup> attention often focus on older adult maltreatment in formal settings (i.e., assisted living facilities or nursing homes), most incidents of maltreatment occur at the hands of informal caregivers.<sup>10</sup>

Because older adult maltreatment often goes unreported,<sup>11</sup> many states have enacted mandatory reporting statutes modeled after child maltreatment mandatory reporting statutes.<sup>12</sup> There are several potential problems—both legal and empirical—that make child maltreatment mandatory reporting statutes inappropriate for application to older adult maltreatment.<sup>13</sup> By forcing older adult maltreatment into the *parens patriae* framework of child maltreatment statutes, state legislatures have effectively disempowered older adults who should be considered competent decision makers unless adjudicated otherwise. Some legal scholars have proposed that empowering older adults might increase self-reporting of maltreatment, thereby eliminating the need for mandatory reporting statutes.<sup>14</sup> Empirical research is needed, however, to understand how older adults view maltreatment situations and whether older adults would report

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7. John F. Wasik, *The Fleecing of America's Elderly*, CONSUMERS DIGEST, Mar.–Apr. 2000, at 78. Current estimates put the overall reporting of financial exploitation at only one in twenty-five cases, suggesting that there may be at least five million financial abuse victims each year. *Id.*

8. See, e.g., Fred Grimm, *Assisted Living Facility Horrors Have Gone Unpunished*, MIAMI HERALD, May 4, 2011, <http://www.miamiherald.com/2011/05/04/2201449/alf-horrors-have-gone-unpunished.html#storylink=misearch>; Lois Puglionesi, *Quadrangle Residents Defend Facility*, DAILY TIMES, June 7, 2011, available at <http://delcotimes.com/articles/2011/06/07/news/doc4ded7f527c7de390514031.txt>.

9. E.g., *Beverly Healthcare Lumberton v. Leavitt*, 338 F. App'x 307 (4th Cir. 2009).

10. See PAMELA B. TEASTER ET AL., NAT'L CTR. ON ELDER ABUSE, THE 2004 SURVEY OF STATE ADULT PROTECTIVE SERVICES: ABUSE OF ADULTS 60 YEARS OF AGE AND OLDER 6 (2006), available at [http://www.ncea.aoa.gov/Main\\_Site/pdf/2-14-06%Final%2060+REPORT.pdf](http://www.ncea.aoa.gov/Main_Site/pdf/2-14-06%Final%2060+REPORT.pdf); *Elder Abuse and Neglect: In Search of Solutions*, AM. PSYCHOL. ASS'N, <http://www.apa.org/pi/aging/resources/guides/elder-abuse.aspx> (last visited Nov. 12, 2011).

11. INCIDENCE STUDY, *supra* note 5, at 4; Pamela B. Teaster et al., *A Glass Half Full: The Dubious Behavior of Elder Abuse Policy*, 22 J. ELDER ABUSE & NEGLECT 6, 7 (2010) (noting that in 2009 we still do not know the “prevalence, the incidence, or the outcomes of abuse”).

12. See Joseph W. Barber, Note, *The Kids Aren't Alright: The Failure of Child Abuse Statutes as a Model for Elder Abuse Statutes*, 16 ELDER L.J. 107, 108 (2008).

13. Nina A. Kohn, *Outliving Civil Rights*, 86 WASH. U. L. REV. 1053, 1055 (2009) (noting that mandatory reporting also creates serious constitutional infringements); Barber, *supra* note 12, at 117.

14. Kohn, *supra* note 13, at 1111; Barber, *supra* note 12, at 134.

incidences of maltreatment, the circumstances under which they would report, and to whom they would report.

This Article will examine the current legal and empirical framework aimed at understanding and reducing older adult maltreatment. Part II examines the historical development of legal protections for older adult maltreatment based on protections for child maltreatment. Part III provides legal definitions and addresses the complications with those definitions. Part IV explores the legal system's attempt at reducing older adult maltreatment through mandatory reporting statutes—as well as the benefits and problems associated with mandatory reporting. Part V presents a small empirical study that examined older adults' perceptions of maltreatment and likelihood of reporting based on type of caregiver (formal or informal) and type of maltreatment. Part VI discusses the results of the study and provides suggestions for future research.

## II. Protecting Older Adults Via Child Protection

The first documented U.S. case involving child maltreatment involved a girl, Mary Ellen, from New York in the 1870s who suffered abuse from her foster parents.<sup>15</sup> For the next century, the U.S. legal system slowly built a structure meant to protect and care for children,<sup>16</sup> but that system also spawned a response to older adult maltreatment that relies on the same concerns and historical backdrop. As such, we turn now to a brief historical review<sup>17</sup> of the policy and legal response to child maltreatment, which will guide our examination of the older adult system.

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15. ERIC A. SHELMAN & STEPHEN LAZORITZ, *THE MARY ELLEN WILSON CHILD ABUSE CASE AND THE BEGINNING OF CHILDREN'S RIGHTS IN 19TH CENTURY AMERICA* 11 (2005).

16. A few steps along the way include the formation of the first juvenile court in 1899, ROLANDO V. DEL CARMEN & CHAD R. TRULSON, *JUVENILE JUSTICE: THE SYSTEM, PROCESS, AND LAW* 253 (2005), the White House Conference on Children in 1912 that resulted in Congress forming the Children's Bureau, *It's Your Children's Bureau*, SOC. SEC. ADMIN., <http://www.ssa.gov/history/childb2.html> (last visited Nov. 11, 2011), and the 1944 Supreme Court case of *Prince v. Massachusetts* that permitted the state to intervene in family matters to protect the child. See generally *Prince v. Massachusetts*, 321 U.S. 158 (1944).

17. A number of other sources provide more in depth attention to this history. For example, see Nina Santo, *Breaking the Silence: Strategies for Combating Elder Abuse in California*, 31 MCGEORGE L. REV. 801 (2000) (discussing changes in California's elder abuse laws over time).

In a 1962 article in the *Journal of the American Medical Association*, Dr. Henry Kempe and his colleagues detailed the results of a study in which hundreds of children who were severely injured by their parents suffered from what he called “battered child syndrome.”<sup>18</sup> Influenced by Kempe’s study, the Department of Health, Education and Welfare (DHEW)<sup>19</sup> soon thereafter passed a model statute for physicians to report child maltreatment following reports of “battered child syndrome.”<sup>20</sup> In the next decade, Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA).<sup>21</sup> CAPTA provided states with guidelines for addressing child maltreatment; federal funding to assist abuse victims depended on states enacting and enforcing laws that followed the CAPTA template.<sup>22</sup> One important provision of CAPTA required that certain individuals mandatorily report child maltreatment,<sup>23</sup> presumably because children would not be capable of self-reporting. States even responded with criminal penalties for mandatory reporters who failed to report—emphasizing the importance of third-party reporters.<sup>24</sup>

With Mary Ellen’s horrific case and Dr. Kempe’s “battered children” as examples, society took a stance against victimization of the weak.<sup>25</sup> Children clearly are weak, but are older adults weak simply because of their age? Legislatures answered this question with laws meant to “protect” older adults that had the same paternalistic stance

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18. See Henry C. Kempe et al., *The Battered-Child Syndrome*, 181 JAMA 17, 17 (1962); Jessica Ann Toth Johns, *Mandated Voices for the Vulnerable: An Examination of the Constitutionality of Missouri’s Mandatory Child Abuse Reporting Statute*, 72 UMKC L. REV. 1083, 1085 (2004).

19. CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH, EDUC., & WELFARE, *THE ABUSED CHILD: PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON REPORTING OF THE PHYSICALLY ABUSED CHILD* 11–13 (1963).

20. Mark R. Brown, *Rescuing Children from Abusive Parents: The Constitutional Value of Pre-Deprivation Process*, 65 OHIO ST. L.J. 913, 942 (2004); Caroline T. Trost, Note, *Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments*, 51 VAND. L. REV. 183, 192 (1998).

21. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as 42 U.S.C. §§ 5101–5106 (2006)).

22. 42 U.S.C. § 5106a.

23. *Id.* § 5105.

24. *Penalties for Failure to Report and False Reporting of Child Abuse and Neglect: Summary of State Laws*, CHILD WELFARE INFO. GATEWAY, [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/report.cfm#three](http://www.childwelfare.gov/systemwide/laws_policies/statutes/report.cfm#three) (last visited Nov. 11, 2011) (stating that most states classify the failure to report as a misdemeanor, but a few classify it as a felony).

25. See Seymour Moskowitz, *Saving Granny from the Wolf: Elder Abuse and Neglect—The Legal Framework*, 31 CONN. L. REV. 77, 83 (1998).

as the laws for children.<sup>26</sup> In contrast to intimate partner violence, where the assumption is generally that the victim is a competent adult who can choose to report or not report the abuse,<sup>27</sup> the response to older adult maltreatment mimics the response to child maltreatment.<sup>28</sup>

In fact, in the elder maltreatment context, major players, stated intents, and implementation of the laws were clearly the same or borrowed from the child maltreatment context.<sup>29</sup> For example, Congressman Mario Biaggi, who was instrumental in the creation of CAPTA, also led one of the first congressional attempts to address older adult maltreatment at a 1978 hearing by the Subcommittee on Human Services Select Committee on Aging.<sup>30</sup> A few years later, the U.S. House Select Committee on Aging's report concerning older adult maltreatment emphasized the need for federal laws concerning older adult maltreatment that would mirror the child maltreatment laws.<sup>31</sup> Modeled after agencies such as Child Protective Services, states aimed to protect older adults in the care of informal caregivers in domestic settings by developing agencies such as Adult Protection Services (APS) or Elder Protection Services (EPS).<sup>32</sup>

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26. John B. Breaux & Orrin G. Hatch, *Confronting Elder Abuse, Neglect and Exploitation: The Need for Elder Justice Legislation*, 11 *ELDER L.J.* 207, 213 (2003).

27. This is not always the case, and there seems to be a movement to change the assumption. Jennifer Brown-Cranstoun, *Kringen v. Boslough and Saint Vincent Hospital: A New Trend for Healthcare Professionals Who Treat Victims of Domestic Violence?*, 33 *J. HEALTH L.* 629, 629–31 (2000). At least five states currently mandate that physicians report their suspicion of intimate partner abuse to a law-enforcement agency, even over the protests of the victim. CAL. PENAL CODE § 11160 (West 2011); COLO. REV. STAT. ANN § 12-36-135 (West 2010); KY. REV. STAT. ANN. § 209.030 (West 2011); N.H. REV. STAT. ANN. § 631:6 (West 2011); R.I. GEN. LAWS § 23-17.8-2 (West 2011). See generally Brown-Cranstoun, *supra*; James T. R. Jones, *Kentucky Tort Liability for Failure to Report Family Violence*, 26 *N. KY. L. REV.* 43, 57 (1999); Mia M. McFarlane, *Mandatory Reporting of Domestic Violence: An Inappropriate Response for New York Health Care Professionals*, 17 *BUFF. PUB. INT. L.J.* 1, 21 (1999).

28. See Laurie A. Lewis, *Toward Eliminating the Abuse, Neglect, and Exploitation of Impaired Adults: The District of Columbia Adult Protective Services Act of 1984*, 35 *CATH. U. L. REV.* 1193, 1198 (1986).

29. Nina A. Kohn, *Second Childhood: What Child Protection Systems Can Teach Elder Protection Systems*, 14 *STAN. L. & POL'Y REV.* 175, 176 (2003).

30. Teaster et al., *supra* note 11, at 10.

31. ACTIVITIES OF THE AGING COMMITTEE IN THE 98TH CONGRESS, H.R. Doc. 99-486 (1985). As part of the justification, this report highlighted that federal assistance was approximately ten times higher for addressing child maltreatment as compared to older adult maltreatment. *Id.*

32. A second approach, known as the "institutional approach," was developed for formal caregiving and is not based on child protection services because most child maltreatment occurs in domestic settings. Kohn, *supra* note 29, at 183. This approach developed as a result of the Nursing Home Reform Act—part of the

The child protection system, however, has had more national legislation and funding<sup>33</sup> for both definitions of maltreatment and the regulation of child abuse laws; thus, despite an effort to model older adult protections after that of child protection, there is a more clear and established system in place to address child maltreatment.<sup>34</sup> One reason for this discrepancy could be because the application of policies meant to address issues for children become unsuitable when applied to adults—even older adults. This is particularly noticeable in the definitions of maltreatment, victims, and perpetrators.<sup>35</sup> The unsuitability becomes even more noticeable when we consider mandatory reporting requirements.<sup>36</sup> We will first address the definitional issues and then turn our attention to mandatory reporting issues.

### III. Definitional Issues

Although there are similarities between child maltreatment and older adult maltreatment, there are several unique issues that make

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Omnibus Budget Reconciliation Act (OBRA) of 1987—which was enacted due to concerns about the amount of government funds spent on nursing homes and to improve the quality of care in nursing homes. *Id.* With the institutional approach, a Long-Term Care Ombudsman Program was developed to receive, investigate, and resolve complaints in facilities. *Id.* The institutional approach provides the only national regulations, such as the provisions under the Centers for Medicare and Medicaid Services (CMS), and these are not applicable to domestic settings. *See id.*; see also George S. Ingalls et al., *Elder Abuse Originating in the Institutional Setting*, 74 N.D. L. REV. 313, 313 (1998).

33. Teaster et al., *supra* note 11, at 11.

34. Molly Dickinson Velick, *Mandatory Reporting Statutes: A Necessary Yet Underutilized Response to Elder Abuse*, 3 ELDER L.J. 165, 189 (1995) (noting that despite several attempts, Congress has not passed legislation similar to CAPTA for the protection of older adults). In 1981, the House Select Committee on Aging first addressed the issue of elder mistreatment to Congress and recommended passage of a statute similar to CAPTA, but it failed. *Id.* 169–70. In 1987, an amendment to the Older Americans Act described elder abuse, neglect, and exploitation but received very little federal funding. *Id.* at 179. In the Patient Protection and Affordable Care Act, Congress passed the Elder Justice Act (EJA 2009) in March of 2010, the first comprehensive federal statute aimed at elder abuse prevention. The Elder Justice Act of 2009, Pub. L. No. 111-148, 124 Stat. 782 (codified as 42 U.S.C. § 1395i-3a). The EJA organizes federal abuse detection and prevention services within the Office of the Secretary of Health and Human Services, as well as creates an Elder Abuse Coordinating Council composed of federal departments and agency directors and an Advisory Board on Elder Abuse, Neglect, and Exploitation. *Id.* Although hailed as a victory for aging advocates, the law is powerless because, once again, there is a lack of funding to carry out the provisions of the Act. *March 23rd Marks the One Year Anniversary of the Elder Justice Act*, ELDER JUSTICE COALITION, <http://www.elderjusticecoalition.com> (last visited Nov. 11, 2011).

35. 42 U.S.C. § 5106(g) (2006).

36. *See infra* Section IV.



modeling older adult laws on child laws unsuitable. For one, the nature of the maltreatment is quite different. For instance, child protection laws do not provide appropriate examples for financial and sexual abuse.<sup>37</sup> For financial abuse, children do not have the assets that older adults have and thus would not likely encounter such abuse.<sup>38</sup> Because older adults are at the age of majority for sexual consent, unlike children,<sup>39</sup> statutory provisions based on age are not applicable, and should be based on competency instead. Neglect is arguably also unique and unsuitable for modeling from child laws because older adults are of consenting age (unless incompetency legal proceedings have taken place) for making medically-related decisions. Thus, issues of neglect can become ambiguous when, for example, the older adult refuses care (e.g., food and medication)<sup>40</sup> or it is unclear whether another person is actually a caregiver for the older adult.<sup>41</sup>

The National Research Council attempts to attend to these differences by defining older adult maltreatment as “(1) physical acts causing pain or injury; (2) conduct inflicting emotional distress or psychological harm; (3) sexual assault; (4) financial exploitation; and (5) neglect.”<sup>42</sup> Most state statutes are consistent in defining older adult maltreatment according to this model definition.<sup>43</sup> Where states differ, however, are the specific provisions related to determining potential victims and perpetrators.<sup>44</sup>

For children, we have decided as a culture that a person reaches the age of majority at eighteen years of age. Whether a child truly becomes a competent adult the morning of his or her eighteenth birth-

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37. Kohn, *supra* note 29, at 177.

38. See generally Carolyn L. Dessin, *Financial Abuse of the Elderly: Is the Solution a Problem?*, 34 MCGEORGE L. REV. 267 (2003) (noting that the elderly are the wealthiest group in America); Carolyn L. Dessin, *Should Attorneys Have a Duty to Report Financial Abuse of the Elderly*, 38 AKRON L. REV. 707 (2005) (discussing the prevalence of and possible approaches to addressing older adult financial abuse).

39. Kohn, *supra* note 29, at 177.

40. *Peterson v. Florida*, 765 So. 2d 861, 863 (Fla. Dist. Ct. App. 2000) (familial caregivers cited the victim's refusal of help in defense of their improper care); *People v. Simester*, 678 N.E.2d 710, 712 (Ill. App. Ct. 1997) (noting that defendants and their witnesses argued that the victim was grouchy, which made it difficult for the caregivers to know that he needed care).

41. Lindsey E. Wylie & Eve M. Brank, *Assuming Elder Care Responsibility: Am I a Caregiver?*, 6 J. EMPIRICAL LEGAL STUD. 899, 903 (2009).

42. ELDER MISTREATMENT: ABUSE, NEGLIGENCE, AND EXPLOITATION IN AN AGING AMERICA 35 (Richard J. Bonnie & Robert B. Wallace eds., 2003) [hereinafter ELDER MISTREATMENT].

43. *Id.* at 34–35.

44. *Id.* at 35.

day could be debated, but it is a generally accepted principle.<sup>45</sup> In contrast, without any specific age at which people “naturally” become incompetent (if they ever do), legislatures have had to rely on other standards. Generally, older adults are protected based on a statutorily defined qualifying age—sometimes as young as sixty years old.<sup>46</sup> Other times, they are subsumed within the general “vulnerable person over the age of eighteen” statutes.<sup>47</sup>

Who can be held responsible for maltreatment is also statutorily defined and often depends on the type of maltreatment and the type of relationship between the caregiver and care recipient.<sup>48</sup> Cases of neglect probably create the most complications. A person is responsible if he or she had a duty to provide care; however, the definition of who has such a duty varies. In some states anyone who has “assumed the responsibility” could be held responsible for neglect.<sup>49</sup> Those with this responsibility are sometimes more specifically defined as, but are not limited to, “relatives, . . . household members, neighbors, . . . and employees or volunteers of facilities.”<sup>50</sup> Other statutes require a “family or legal relationship”<sup>51</sup> or a “contractual undertaking to provide care”<sup>52</sup> for a person to be held responsible for neglect.

The nature of the relationship between older adults and the abuser adds another layer of statutory complexity. Some states sepa-

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45. See MARTIN R. GARDNER, UNDERSTANDING JUVENILE LAW 4–5 (3d ed. 2009).

46. CAL. PENAL CODE § 368(g) (West 2011) (defining “elder” as “any person who is 65 years of age or older”); CONN. GEN. STAT. ANN. § 176-450 (West 2011) (defining “elderly person” as “any resident of Connecticut who is sixty years of age or older”); LA. REV. STAT. ANN. § 46:61 (West 2011) (noting that “elderly abuse” constitutes “abuse of any person sixty years of age or older and shall include the abuse of any infirm person residing in a state licensed facility”).

47. E.g., ALA. CODE § 38-9-2 (LexisNexis 1992); MINN. STAT. ANN. § 626.5572 (West 2009); NEB. REV. STAT. § 28-371 (2008).

48. ELDER MISTREATMENT, *supra* note 42, at 28.

49. FLA. STAT. ANN. § 415.102(4) (West 2009) (defining “caregiver” as a “person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person’s guardian that a caregiver role exists”); KAN. STAT. ANN. § 39-1430(i) (West 2011) (defining a caretaker as “a person who has assumed the responsibility . . . for an adult’s care or financial management or both”); MA. REV. STAT. ANN. tit. 22, § 3472(3) (West 2004) (defining a caretaker as “any individual or institution who has or assumes the responsibility for care of an adult”).

50. E.g., FLA. STAT. ANN. § 825.101(2).

51. E.g., COLO. REV. STAT. ANN. § 26-3.1-101(2) (West 2002).

52. E.g., MD. CODE ANN., CRIMINAL § 3-604(3) (LexisNexis 2002).

rately define abuse and neglect as formal (i.e., institutional)<sup>53</sup> versus informal abuse and neglect.<sup>54</sup> For the statutes that specifically define institutional abuse and neglect separately from the general abuse and neglect provisions, the difference typically involves language such as infliction of harm on a “resident”<sup>55</sup> or “failure in a long term care facility” to provide adequate care.<sup>56</sup> With such a multifaceted array of statutory provisions for defining who can be held responsible for what, it is no wonder this legal area is not always clear to those it affects.<sup>57</sup> It is also clear that borrowing<sup>58</sup> from the child protection system may not always have the most appropriate result.<sup>59</sup> Mandatory reporting requirements clearly demonstrate these problems.

#### IV. Mandatory Reporting Statutes

One pervasive issue for both child and older adult maltreatment legislation involves identifying victims. There are generally two approaches: (1) rely on reports by those who interact with the victims (i.e., mandatory reporters) or (2) rely on self-reports.<sup>60</sup> Because older adult maltreatment policy has historically been based on the child maltreatment template, most public policy has aimed to improve the first approach and failed to focus on the second. The rationales for mandatory reporting statutes under CAPTA and the various state statutes for older adults are the same. Mandatory reporting statutes are intended to be an identification tool so that a vulnerable victim can be detected and assistance can be rendered.<sup>61</sup> It is believed that statu-

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53. *E.g.*, DEL. CODE ANN. tit. 16, § 1131(9) (2003).

54. *E.g.*, *id.* tit. 31, § 3902(15) (2009); 320 ILL. COMP. STAT. ANN. 20/2 (West 2008); *id.* 30/3; *id.* 45/1-103; 720 ILL. COMP. STAT. ANN. 5/12-19 (West 2008); OR. REV. STAT. § 441.630 (2009).

55. *E.g.*, 210 ILL. COMP. STAT. ANN. 30/3(b).

56. *E.g.*, *id.* 45/1-117; 720 ILL. COMP. STAT. ANN. 5/12-19.

57. Wylie & Brank, *supra* note 41, at 903.

58. The state of Florida provides an example of elder maltreatment legislation mirroring child maltreatment legislation, and it appears as though the authors of the statute merely did a search for the word “child” and replaced with the words “elderly person or disabled adult.” Compare FLA. STAT. § 827.03 (West 2009) (for children) and FLA. STAT. § 825.102 (for older adults).

59. See Kohn, *supra* note 13, at 1108.

60. Kohn, *supra* note 29, at 187–88.

61. See *Survey of State Adults Protective Services (APS) Programs*, U.S. GOV'T ACCOUNTABILITY OFF., <http://www.gao.gov/special.pubs/gao-11-129sp/results.htm> (last visited Nov. 11, 2011) (noting that thirty-seven states have a telephone number for reporting suspected abuse, thirty-two states said they had specific mandated reporters, fourteen states said that everyone in the state is a mandated reporter, and four states said the state has no mandated reporters).

torily defined mandatory reporters are best situated to detect maltreatment because they have regular contact with vulnerable populations that are unable to self-report maltreatment.<sup>62</sup> Relying on mandatory reporting for older adults is fundamentally different from mandatory reporting for children because we should be considering older adults' privacy rights and autonomy rather than only considering the state's interest in protecting older adults.<sup>63</sup>

In addition to the theoretical problems, one practical complication arising from older adult statutes mimicking child maltreatment statutes is the persons defined as mandatory reporters. Consider the Colorado statutes that include a list of professionals who are either "urged to report"<sup>64</sup> for older adult maltreatment or "required to report"<sup>65</sup> for child maltreatment. The lists are similar except the older adult statute does not include as many professions.<sup>66</sup> For children, the list of mandatory reporters is generally longer<sup>67</sup> and the mandatory reporters are people with whom there is natural, and often mandated, contact. School personnel, for instance, interact with children because of compulsory school attendance laws.<sup>68</sup> Likewise, day care providers come in regular contact with children because children cannot be left at home alone when they are young.<sup>69</sup> Even medical professionals may be more likely to interact with children than older adults because of school vaccination and physical policies.<sup>70</sup>

Importantly, some older adult maltreatment statutes also urge those in the listed professions and "any other person" to report to law enforcement known or suspected *self-neglect*.<sup>71</sup> Not surprisingly, such complementary reference to self-neglect is not present in the child

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62. Moskowitz, *supra* note 25, at 108.

63. Kohn, *supra* note 13, at 1086-87; Barber, *supra* note 12, at 122. Also, because financial abuse is unique to older adults (as compared to children), some mandatory reporters have been financial institutions. See generally Charles Pratt, *Banks' Effectiveness at Reporting Financial Abuse of Elders: An Assessment and Recommendations for Improvements in California*, 40 CAL. W. L. REV. 195 (2003).

64. COLO. REV. STAT. ANN. § 26-3.1-102(1)(b) (West 2002).

65. *Id.* § 19-3-304(2) (West 2005).

66. For example, optometrists, chiropractors, podiatrists, Christian Science practitioners, dental hygienists, physical therapists, and licensed counselors are among those listed as mandatory reporters for child abuse, but not for elder abuse. Compare *id.*, with COLO. REV. STAT. ANN. § 26-3.1-102(1)(b).

67. Kohn, *supra* note 29, at 187.

68. *Id.* at 189.

69. See *id.*

70. See *id.*

71. E.g., COLO. REV. STAT. ANN. § 26-3.1-102(1)(c).

abuse statute. In fact, at least eight states include references to self-neglect in their mandatory reporting of older adult maltreatment statutes;<sup>72</sup> whereas, no child abuse reporting statutes do. Self-neglect could be indicative of underlying mental or health concerns that should be reported to appropriate authorities, but it could also simply be a well-thought, competent desire to die or simply to be left alone. Inclusion of self-neglect into the mandatory reporting statutes further curtails older adult autonomy.

As autonomous beings, adults in the United States have the right to make their own medical decisions—to either accept or reject treatment as long as those decisions are within the boundary of the law.<sup>73</sup> Ironically, older adults' autonomy and right to self-determination allow them the ability to decide to die by refusing treatment, but mandatory reporting statutes restrict the decision to stay in an abusive situation.<sup>74</sup> Further, it is often assumed that being abused or choosing to stay in an abusive situation is evidence of incapacity, requiring intervention,<sup>75</sup> and that the older adult does not report because they are unable to and not because it is a rational decision.<sup>76</sup> Many older adults have reported, however, that the alternative to leaving the abusive situation (typically institutionalization)<sup>77</sup> is often worse than living with the abuse.<sup>78</sup>

Mandatory reporting statutes for older adults, therefore, undermine both older adults' autonomy and rights for self-determination<sup>79</sup>

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72. See ALASKA STAT. § 47.24.010 (2010); COLO. REV. STAT. § 26-3.1-102; D.C. CODE § 7-1903 (LexisNexis 2011); 320 ILL.COMP. STAT. 20/2 (2008); MD. CODE ANN. FAM. LAW § 14-302 (LexisNexis 2011); N.C. GEN. STAT. § 108A-101 (2011); OHIO REV. CODE ANN. § 5101.60 (LexisNexis 2008); WYO. STAT. ANN. § 35-20-103 (2011).

73. *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 270 (1990); see Audrey S. Garfield, Note, *Elder Abuse and the States' Adult Protective Services Response: Time for a Change in California*, 42 HASTINGS L.J. 859, 879 (1991).

74. Garfield, *supra* note 73, at 879–81.

75. Lawrence R. Faulkner, *Mandating the Reporting of Suspected Cases of Elder Abuse: An Inappropriate, Ineffective and Ageist Response to the Abuse of Older Adults*, 16 FAM. L.Q. 69, 86 (1982).

76. Garfield, *supra* note 73, at 879.

77. E. E. Lau & Jordan I. Kosberg, *Abuse of the Elderly by Informal Caregivers*, AGING Sept.–Oct. 1979, at 14 (noting that once cases are handled by APS, many result in institutionalization, which is a frightening prospect for many older adults); see Faulkner, *supra* note 75, at 84–85; Jennifer Beth Glick, *Protecting and Respecting Our Elders: Revising Mandatory Elder Abuse Reporting Statutes to Increase Efficacy and Preserve Autonomy*, 12 VA. J. SOC. POL'Y & L. 714, 725–26 (2005).

78. Garfield, *supra* note 73, at 879.

79. Barber, *supra* note 12, at 122.

by presuming that older adults have reduced capacity.<sup>80</sup> In fact, many APS statutes rely only on age as a factor for mandatory reporting, which disregards the actual mental state and ability to self-report of the older adult who is being victimized.<sup>81</sup> This presumption, however, is likely due to widespread ageist beliefs that older adults are incompetent.<sup>82</sup> Not only are these policies likely based on ageism, but they also facilitate increased ageism by usurping older adults' decision making.<sup>83</sup>

The mandatory reporting imposition on older adult autonomy seems even more egregious because the age of application for some of these statutes is sixty years or older.<sup>84</sup> Although sixty was once considered "old," it certainly is not necessarily so anymore. Medical and safety advancements have resulted in an increase in average life span by about ten years in the past half century.<sup>85</sup> Arguably then, sixty is the new fifty,<sup>86</sup> evidenced not only by longer life expectancies, but also by later retirement<sup>87</sup> and the encouragement to be more physically active.<sup>88</sup>

For states like Ohio that apply mandatory reporting laws to anyone sixty years or older<sup>89</sup> and include self-neglect within their definitions of neglect,<sup>90</sup> there is a potential for legal involvement with a population that is likely competent to make their own decisions. To take this to the extreme and apply the Ohio statute as it is written, imagine a sixty-year-old individual who is legally handicapped because

80. Ruthann M. Macolini, *Elder Abuse Policy: Considerations in Research and Legislation*, 13 BEHAV. SCI. & L. 349, 350 (1995).

81. *Id.*

82. See generally Susan T. Fiske et al., *A Model of (Often Mixed) Stereotype Content: Competence and Warmth Respectively Follow from Perceived Status and Competition*, 82 J. PERSONALITY & SOC. PSYCHOL. 878 (discussing the perceived incompetence of stereotyped groups).

83. Faulkner, *supra* note 75, at 90; Kohn, *supra* note 29, at 181–82.

84. E.g., CONN. GEN. STAT. § 17b-450(1) (West 2006); OHIO REV. CODE ANN. § 5101.60(B) (LexisNexis 2008).

85. Elizabeth Arias, *United States Life Tables, 2006*, 58 NAT'L VITAL STAT. REPORTS 1, 3–4 (2010).

86. *The Early Show: Is 60 the New 50?* (CBS television broadcast July 6, 2006), available at <http://www.cbsnews.com/video/watch/?id=1779913n>.

87. Stephen Ohlemacher, *Many Baby Boomers Plan to Retire Late*, CBS NEWS (Feb. 11, 2009), <http://www.cbsnews.com/stories/2007/06/12/national/main2917476.shtml>.

88. See generally Wojtek Chodzko-Zajko, *The USA National Strategic Plan for Promoting Physical Activity in the Mid-Life and Older Adult Population*, 13 STUD. PHYSICAL CULTURE & TOURISM 15, 15–16 (2006).

89. OHIO REV. CODE ANN. § 5101.60(B).

90. *Id.* § 5101.60(K).

of age-related hearing loss.<sup>91</sup> Imagine that same sixty-year-old decides she does not want to go to the doctor concerning an insect bite that appears infected because she is a state senator<sup>92</sup> and the senate is deciding an important piece of legislation that week. Ohio describes self-neglect as a “failure of an adult to provide for self the goods or services necessary to avoid physical harm . . . .”<sup>93</sup> Therefore, any attorney<sup>94</sup> who had “reasonable cause to believe”<sup>95</sup> that the insect bite could get infected and cause “physical harm”<sup>96</sup> would need to “immediately”<sup>97</sup> report such to the county department of job and family services.<sup>98</sup> If we want to make this example even more extreme, then we can focus on a portion of the neglect definition that includes “mental anguish.”<sup>99</sup> In Ohio, self-neglect includes not providing oneself with goods or services necessary to avoid mental anguish.<sup>100</sup> West’s *Encyclopedia of American Law* defines mental anguish as the “mental suffering resulting from the excitation of the more poignant and painful emotions, such as grief, severe disappointment, indignation, wounded pride, shame, *public humiliation*, despair, etc.”<sup>101</sup> Thus, if the state senator were to publicly humiliate herself, then mandated reporters would need to report such “neglect.”

Lest it seem Ohio is an aberration, strict application of North Carolina law has a similar result. North Carolina defines self-neglect as a disabled adult who is living alone and not “able to provide for himself or herself the services which are necessary to maintain the person’s mental or physical health.”<sup>102</sup> For these purposes, being a

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91. Hearing loss therefore resulting in the person being “handicapped by the infirmities of aging.” *Id.* § 5101.60(B).

92. We describe our sixty-year-old as a state senator because there is evidence to suggest that people think of older adults in demeaning stereotypic ways unless they are given cues that the older adult is something like an elder statesman. See Narina Nunez et al., *The Testimony of Elderly Victim/Witnesses and Their Impact on Juror Decisions: The Importance of Examining Multiple Stereotypes*, 23 *LAW & HUM. BEHAV.* 413, 415 (1999).

93. OHIO REV. CODE ANN. § 5101.60(K).

94. Or any of the other several professions listed in OHIO REV. CODE ANN. § 5101.61.

95. *Id.* § 5101.61(A)(6)(g)(ii).

96. *Id.* § 5101.60(K).

97. *Id.* § 5101.61(A)(6)(g)(ii).

98. *Id.*

99. *Id.* § 5101.60(A).

100. *Id.* § 5101.60(K).

101. 7 *W. GRP.*, *Mental Anguish*, in *WEST’S ENCYCLOPEDIA OF AMERICAN LAW* 1, 87–88 (1998).

102. N.C. GEN. STAT. § 108A-101(m) (2011).

disabled adult could involve being “physically or mentally incapacitated due to . . . physical degeneration in connection” with advanced age.<sup>103</sup> Taken together it seems to trigger mandatory reporting when an older adult decides to die at home, alone, without medical assistance.

Despite some similarities for certain types of maltreatment, modeling older adult protection laws after child protection laws results in constitutional infringements for the older adults.<sup>104</sup> The theory that supports child maltreatment laws is *parens patriae*, a legal doctrine that refers to the power of the state to intervene to protect those who cannot protect themselves or their property.<sup>105</sup> Thus, inherent in mandatory reporting statutes is decisional incapacity to protect oneself—clearly defined with children who do not have decisional capacity under age eighteen in most states,<sup>106</sup> but less clearly defined with older adults who must undergo legal proceedings to determine legal incapacity.<sup>107</sup>

## V. Ineffective Reliance on Third Parties and the Reporting System

Some arguments against modeling older adult maltreatment policy on mandatory reporting for child maltreatment include underreporting by mandatory reporters and issues with the system itself. Most of the research examining mandatory reporting has focused on the behavior of mandatory reporters, especially physicians who are primarily relied upon because they are presumably in a unique position to recognize older adult maltreatment.<sup>108</sup> Despite this and the frequency with which older adults are in contact with medical professionals, physicians detect and report abuse infrequently.<sup>109</sup> Even

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103. *Id.* § 108A-101(d).

104. *See generally* Kohn, *supra* note 13 (discussing constitutional concerns with elder protection statutes).

105. Faulkner, *supra* note 75, at 76; Garfield *supra* note 73, at 877.

106. *See, e.g.*, 105 ILL. COMP. STAT. 5/14-6.10(a) (2011); OHIO REV. CODE § 3109.01 (2011). *But see* NEB. REV. STAT. § 43-245(1) (2011) (listing age of majority as nineteen).

107. *See generally* LAWRENCE A. FROLIK & ALISON MCCHRYSAL BARNES, *ELDER LAW: CASES AND MATERIALS* 377–81 (5th ed. 2011).

108. Terry Fulmer et al., *Progress in Elder Abuse Screening and Assessment Instruments*, 52 J. AMER. GERIATRICS SOC. 297, 298 (2004).

109. Dorrie E. Rosenblatt et al., *Reporting Mistreatment of Older Adults: The Role of Physicians*, 44 J. AM. GERIATRICS SOC'Y 65, 66 (1996) (noting that two percent of



though physicians have expressed awareness that reporting is a requirement, most did not know the procedures for reporting and the degree of certainty required for reporting.<sup>110</sup> In a study that examined possible interventions for suspected child abuse and older adult abuse, both social workers and physicians were more likely to say they would “report” child abuse, but were more likely to “discuss with the patient” suspected older adult abuse.<sup>111</sup>

Physicians are generally reluctant to report suspected maltreatment of older adults and offer several reasons for this reluctance. First, physicians express concern about accurately diagnosing maltreatment in older adults.<sup>112</sup> The underlying reason, of course, is that abuse symptoms could be concealed by symptoms of medical issues common to older adults. For instance, older adults have difficulties with mobility that often result in falling and bruising.<sup>113</sup> Additionally, when injuries do appear to be abuse-related they are often minor and do not seem to constitute reportable injuries.<sup>114</sup> Physicians have also stated they have ethical and trust-related concerns with respect to provider-patient confidentiality and rapport.<sup>115</sup> Since the early 1800s, the United States has recognized the confidential nature of this relationship because full disclosure by the patient is in the patient’s best interest for treatment.<sup>116</sup> Despite this, the law has carved out exceptions for reasons such as disclosure of criminal activity or maltreatment of children or older adults.<sup>117</sup> In general, these exceptions are intended to protect those who cannot protect themselves—an assumption made about older adults.<sup>118</sup>

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reports were made by physicians in a survey of reported cases of abuse in Michigan).

110. R. Steven Daniels et al., *Physicians’ Mandatory Reporting of Elder Abuse*, 29 GERONTOLOGIST 321, 324 (1989).

111. Virginia P. Tilden et al., *Factors that Influence Clinicians’ Assessment and Management of Family Violence*, 84 AM. J. PUB. HEALTH 628, 630–31 (1994).

112. Daniels et al., *supra* note 110, at 321–22.

113. Barber, *supra* note 12, at 123; see Janine Robben, *Keeping an Eye Out for Elders: Tough Times Call for Knowing the Signs of Abuse or Neglect*, 69 OR. ST. B. BULL. 19, 27 (2009) (discussing the role of attorneys in spotting the different types of older adult maltreatment).

114. Daniels et al., *supra* note 110, at 324.

115. Michael A. Rodríguez et al., *Mandatory Reporting of Elder Abuse: Between a Rock and a Hard Place*, 4 ANNALS FAM. MED. 403, 405–06 (2006).

116. Faulkner, *supra* note 75, at 82.

117. *Id.* at 82–83; see *supra* note 27.

118. Faulkner, *supra* note 75, at 83; Garfield, *supra* note 73, at 878.

The application of the laws has also been problematic. After states first enacted mandatory reporting laws for older adults, one study compared sixteen state older adult abuse reporting statutes and their implementation and found that "information generated by the reporting system was disappointing."<sup>119</sup> A main reason for the disappointing findings could be the inherent difficulties in studying this topic. In 1991, the United States General Accounting Office (GAO) attempted to study the effectiveness of identifying older adult victims through reporting laws by comparing the forty-two states that had mandatory reporting to the eight states that had voluntary reporting.<sup>120</sup> The GAO concluded that they could not make a "meaningful comparison" because states had different legal definitions of abuse, different procedures for collecting data, and different immeasurable and extraneous factors relating to reporting.<sup>121</sup>

A survey of public health departments (who are mandatory reporters) has also identified that there is a disconnect between awareness of mandatory reporters and specific activities to support reporting procedures—such that ninety-four percent of respondents were aware of the state law but only twenty to twenty-eight percent described the procedures for reporting in their written procedures or training materials.<sup>122</sup> According to the 1990 report from the Subcommittee on Health and Long-Term Care, even though mandatory reporting statutes have been prevalent since the House Select Committee on Aging first addressed the issue in 1981, the incidence of abuse increased, while the incidence of reporting older adult abuse decreased.<sup>123</sup> Other problems included insufficient funding to provide adequate services and the failures to prosecute alleged abusers.<sup>124</sup>

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119. Elyse Salend et al., *Elder Abuse Reporting: Limitations of Statutes*, 24 GERONTOLOGIST 61, 64 (1984).

120. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO HRD-91-74, ELDER ABUSE: EFFECTIVENESS OF REPORTING LAWS AND OTHER FACTORS 2 (1991), available at [http://www.popcenter.org/problems/crimes\\_against\\_elderly/PDFs/USGAO\\_1991.pdf](http://www.popcenter.org/problems/crimes_against_elderly/PDFs/USGAO_1991.pdf).

121. *Id.* at 4.

122. Phyllis Ehrlich & Georgia Anetzberger, *Survey of State Public Health Departments on Procedures for Reporting Elder Abuse*, 106 PUB. HEALTH REP. 151, 153 (1991).

123. SUBCOMM. ON HEALTH & LONG-TERM CARE OF THE H. SELECT COMM. ON AGING, ELDER ABUSE: A DECADE OF SHAME AND INACTION, H.R. REP. NO. 101-752, at xiii (1990).

124. Salend et al., *supra* note 119, at 65.

Although a suggested solution for identifying victims without reliance on third parties is to empower older adults to self-report, some scholars have suggested under-reporting will still occur due to the negative social stigma attached to being a victim of abuse,<sup>125</sup> the likelihood that older adults will blame themselves for the abuse,<sup>126</sup> or the aversion to betraying family members.<sup>127</sup>

## VI. The Current Research

Although there are certainly strong pressures for older adults not to ask for help, we know very little about their actual views toward reporting in different situations—reasons which may be well-thought out and rational. The research detailed in this Article aimed to address this gap is based on two relevant factors: the type of abuse and the type of caregiver. Further, as part of a larger program of research intended to examine how society and the law can empower older adults, we gathered initial evidence for reasons older adults may not want to report to law enforcement and examined whether there are alternative people with whom older adults may discuss maltreatment.

### A. Participants

The current study included fifty-seven<sup>128</sup> older adults from a midwestern urban city who were part of an older adult participant pool managed by the authors.<sup>129</sup> A total of 118 participants were contacted with appropriate email and telephone follow-ups, resulting in a response rate of forty-eight percent.<sup>130</sup> The current sample was predominately white (ninety-seven percent) and female (sixty-four percent) with a mean age of 69.3 and with a high level of education (seventy-two percent completed college and forty-six percent completed

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125. Barbara M. Barer, *The Secret Shame of the Very Old: "I've Never Told This to Anyone Else,"* 3 J. MENTAL HEALTH & AGING 365, 373 (1997).

126. *Id.*

127. Kurt C. Kleinschmidt, *Elder Abuse: A Review*, 30 ANNALS EMERGENCY MED. 463, 467 (1997); Sarah S. Sandusky, Note, *The Lawyer's Role in Combating the Hidden Crime of Elder Abuse*, 11 ELDER L.J. 459, 468–69 (2003).

128. Two additional participants started the study but withdrew before answering the questionnaire.

129. The participant pool included 71.3% female participants, who were 99.2% white with an average age of seventy-two ( $SD = 8$ ).

130. Generally, a forty-eight percent response rate for email questionnaires is considered a good response rate.

graduate or professional school). A small portion of the sample were receiving or giving care (three percent and twelve percent, respectively), which was exclusively by and for family members. Most of the sample self-reported "very good" or "excellent" physical health (sixty-three percent) and mental health (seventy-two percent). Finally, because this was an online study, we asked participants about their comfort level with computers and found that most felt moderately to very comfortable with computers (seventy-nine percent). Our participants were a relatively healthy sample of internet users; yet, they provided a unique perspective in examining potential reporting of maltreatment. Even though older adults who are ill, frail, mentally impaired, or depressed are at a higher risk for maltreatment, older adults who do not fall within one of these risk categories are also at risk for being in abusive situations<sup>131</sup> and, as noted above, can fall within the mandatory reporting requirements.

## B. Procedures and Materials

Participants were recruited via email or phone and were entered into a raffle for one of four local grocery store gift cards (\$25 each) in exchange for participation. Upon providing informed consent, participants were asked to assume the role, through self-referencing,<sup>132</sup> of an older adult who had recently undergone hip surgery. They were randomly assigned to one of the types of caregiver conditions: receiving care from an adult child (informal caregiver) or an assisted living facility employee (formal caregiver).<sup>133</sup> For each condition, participants received a series of six, one sentence scenarios describing conduct that could be considered older adult maltreatment according to legal definitions<sup>134</sup> but that might also be perceived as not serious enough to warrant reporting. These scenarios included potential instances of:

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131. *Elder Abuse and Neglect: In Search of Solutions*, AM. PSYCHOL. ASS'N, <http://www.apa.org/pi/aging/resources/guides/elder-abuse.aspx> (last visited Nov. 11, 2011).

132. Self-referencing techniques are used in vignette methodology to increase empathy when asking participants to assume the role of someone depicted in the vignette. Maureen O'Connor et al., *Explaining Sexual Harassment Judgments: Looking Beyond Gender of the Rater*, 28 L. & HUM. BEHAV. 69, 73 (2004).

133. See *infra* Appendix for the example scenarios. Informal caregiver condition, n = 32; formal caregiver condition, n = 25.

134. Scenarios were based on examples provided by the National Center on Elder Abuse. Nat'l Ctr. on Elder Abuse, *Major Types of Elder Abuse*, ADMIN. ON AGING, [http://www.ncea.aoa.gov/ncearoot/main\\_site/FAQ/Basics/Types\\_Of\\_Abuse.aspx](http://www.ncea.aoa.gov/ncearoot/main_site/FAQ/Basics/Types_Of_Abuse.aspx) (last visited Nov. 11, 2011).

intentional neglect, unintentional neglect, physical abuse, emotional or psychological abuse, financial or material exploitation, and sexual abuse.<sup>135</sup> The scenarios were presented in random order, but because of its potentially distressing nature, sexual abuse was always presented last. After each scenario, participants responded to a series of six questions to address their perceptions of the potentially abusive situation.<sup>136</sup> Specifically, the participants indicated whether they saw the perceived situation as morally and legally wrong, whether they would report the situation to the police, reasons they might not report the maltreatment, and whether they would report it to someone other than the police.

### C. Study Results

#### 1. LAY NOTIONS OF MORAL AND LEGAL WRONGNESS

To understand the older adults' basic notions of potential abuse situations, we asked whether they perceived the described situation as morally and legally wrong on two scales measured from one (not at all wrong) to eight (extremely wrong).<sup>137</sup> We did not provide a standard for either determination, but rather, were interested in general lay notions of both morality and legality. Across both formal and informal caregivers combined, participants saw intentional neglect as most morally wrong (mean = 7.89), followed by sexual abuse (7.79), financial abuse (7.67), physical abuse (7.32), emotional abuse (5.82), and unintentional neglect (5.47). The participants' views on which scenarios were legally wrong were similar with intentional neglect perceived as the most legally wrong (7.60), then sexual abuse (7.47), financial abuse (6.88), physical abuse (6.67), unintentional neglect (4.77), and emotional abuse (3.03). Most ratings of moral and legal wrongness did not differ significantly between caregiver types. Respondents perceived financial abuse, however, as more legally wrong when perpetrated by a formal caregiver as compared to an informal caregiver,<sup>138</sup> and they

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135. ELDER MISTREATMENT, *supra* note 42, at 35. Statutes do not separate by intentional and unintentional neglect, but we wanted to examine differences between behavior that was intentional and not.

136. Questions were based loosely on the work of Faulkner, *supra* note 75, at 89. See also Kleinschmidt, *supra* note 127, at 466.

137. See *infra* Appendix (describing question wording); *infra* Table 1 (describing results).

138. Sexual abuse legal wrongness:  $F(1,55) = 3.22, p = .08, d = .48$ ; financial abuse legal wrongness:  $F(1,55) = 8.43, p = .01, d = .76$ ; emotional abuse legal

perceived unintentional neglect as more morally wrong when perpetrated by an informal caregiver as compared to a formal caregiver.<sup>139</sup>

TABLE 1: MORAL AND LEGAL WRONGNESS BY POTENTIAL MALTREATMENT TYPE AND CAREGIVER TYPE<sup>140</sup>  
(1 = NOT AT ALL; 8 = EXTREMELY)

Potential Maltreatment Type	Caregiver type	Morally wrong		Legally wrong	
		<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>
Sexual Abuse	Formal	7.88	.33	7.84	.37
	Informal	7.72	.96	7.19	1.79
	<i>Overall</i>	7.79	.75	7.47	1.39
Financial Abuse	Formal	7.88	.33	7.72 <sup>*</sup>	.84
	Informal	7.50	1.19	6.22 <sup>*</sup>	2.47
	<i>Overall</i>	7.67	.93	6.88	2.06
Emotional Abuse	Formal	6.32	1.73	3.36	2.00
	Informal	5.44	2.03	2.78	2.14
	<i>Overall</i>	5.82	1.94	3.03	2.08
Physical Abuse	Formal	7.08	1.50	6.84	1.31
	Informal	7.50	.80	6.53	1.54
	<i>Overall</i>	7.32	1.17	6.67	1.44
Unintentional Neglect	Formal	4.64 <sup>*</sup>	2.61	4.60	2.71
	Informal	6.13 <sup>*</sup>	2.17	4.91	2.75
	<i>Overall</i>	5.47	2.46	4.77	2.71
Intentional Neglect	Formal	7.92	.40	7.80	.50
	Informal	7.88	.49	7.44	1.01
	<i>Overall</i>	7.89	.45	7.60	.84

NOTE. Significant differences by caregiver condition indicated in superscript (\*  $p < .05$ ; <sup>\*</sup> $p < .10$ ).

wrongness:  $F(1,55) = 1.09$ ,  $p = .30$ ,  $d = .28$ ; physical abuse legal wrongness:  $F(1,55) = .64$ ,  $p = .43$ ,  $d = .21$ ; unintentional neglect legal wrongness:  $F(1,55) = .18$ ,  $p = .68$ ,  $d = .11$ ; intentional neglect legal wrongness:  $F(1,55) = 2.68$ ,  $p = .11$ ,  $d = .43$ .

139. Sexual abuse moral wrongness:  $F(1,55) = .65$ ,  $p = .43$ ,  $d = .21$ ; financial abuse moral wrongness:  $F(1,55) = 2.39$ ,  $p = .13$ ,  $d = .41$ ; emotional abuse moral wrongness:  $F(1,55) = 3.02$ ,  $p = .09$ ,  $d = .46$ ; physical abuse moral wrongness:  $F(1,55) = 1.84$ ,  $p = .18$ ,  $d = .36$ ; unintentional neglect moral wrongness:  $F(1,55) = 5.50$ ,  $p = .02$ ,  $d = .62$ ; intentional neglect moral wrongness:  $F(1,55) = .14$ ,  $p = .71$ ,  $d = .10$ .

140. None of the participants (zero percent) chose "not at all" morally or legally wrong for the formal or informal caregivers in the potential sexual abuse, financial abuse, intentional neglect, or physical abuse scenarios.

## 2. MALTREATMENT BEHAVIORS OLDER ADULTS ARE LIKELY TO REPORT TO THE POLICE

To shed light on which potential maltreatment behaviors older adults would report to the police, we first examined reporting by kind of maltreatment and type of caregiver.<sup>141</sup> Combined across both types of caregivers, participants were most likely to report the described potential sexual abuse (eighty-seven percent would report) and intentional neglect (eighty-three percent). Around half of the participants said they would report the potential financial abuse (sixty-one percent) and physical abuse (forty-three percent). Unintentional neglect (twenty-eight percent) and emotional abuse (seven percent) garnered the fewest participants indicating that they would report. Reporting was not significantly different by caregiver type for most kinds of maltreatment—with participants reporting maltreatment from informal and formal caregivers similarly. Financial abuse and sexual abuse, however, were more likely to be reported when the caregiver was a formal caregiver than an informal caregiver.<sup>142</sup>

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141. See *infra* Table 2; *infra* Appendix (describing question wording).

142. Potential financial abuse:  $\chi^2(1) = 34.79$ ,  $p < .001$ , Cramer's  $V = .78$ ; potential sexual abuse:  $\chi^2(1) = 3.71$ ,  $p = .06$ , Cramer's  $V = .25$ ; potential intentional neglect:  $\chi^2(1) = .14$ ,  $p = .50$ , Cramer's  $V = .05$ ; potential unintentional neglect:  $\chi^2(1) = 1.63$ ,  $p = .16$ , Cramer's  $V = .17$ ; potential physical abuse:  $\chi^2(1) = .64$ ,  $p = .30$ , Cramer's  $V = .11$ ; potential emotional abuse:  $\chi^2(1) = .07$ ,  $p = .60$ , Cramer's  $V = .03$ .

TABLE 2: REPORTING RATES BY POTENTIAL  
MALTREATMENT TYPE AND CAREGIVER TYPE

Potential Maltreatment Type	Caregiver Type	% Who Would Report
Sexual Abuse <sup>†</sup>	Formal	96.0 <sup>*</sup>
	Informal	78.1 <sup>*</sup>
	<i>Overall</i>	87.1
Financial Abuse	Formal	100.0 <sup>†</sup>
	Informal	21.9 <sup>*</sup>
	<i>Overall</i>	61.0
Emotional Abuse	Formal	8.0
	Informal	6.3
	<i>Overall</i>	7.2
Physical Abuse	Formal	48.0
	Informal	37.5
	<i>Overall</i>	42.8
Unintentional Neglect	Formal	20.0
	Informal	35.5
	<i>Overall</i>	27.8
Intentional Neglect	Formal	84.0
	Informal	87.5
	<i>Overall</i>	83.1

NOTE. Significant differences by caregiver condition indicated in superscript ( $p < .05$ ; <sup>†</sup> $p < .10$ ).

Additionally, participants who said they would not report a behavior were asked why they indicated that they would not report.<sup>143</sup> Specifically, we asked if they would not report because: they felt the behavior did not need to be reported, the police would not do anything about it, they would rather deal with the issue without the police, they believed that the perpetrator would get what he or she deserved anyway, they would be embarrassed, they feared retaliation, or they did not want to get the employee or adult child in trouble. Participants could select as many response options as they desired; thus

143. See *infra* Appendix (describing question wording).



percentages represent the frequency that each response was selected from the total number of selected responses across all participants.

For the few participants who said they would not report in the potential intentional neglect and sexual abuse scenarios, the stated rationales for not reporting were spread equally across all of the response options; no one option was endorsed more than another. For the other types of potential abuse, participant responses suggested that they did not want to involve the police but would rather handle the situations themselves. For example, in the potential financial abuse scenario perpetrated by an informal caregiver, seventy-two percent of the respondents<sup>144</sup> said that they would prefer not to involve the police. Similarly, for the potential emotional abuse, seventy-four percent of the respondents<sup>145</sup> in the formal caregiver condition who said they would not report and sixty-seven percent of respondents<sup>146</sup> in the informal caregiver condition who said they would not report, did so because they preferred to address the issue without involving the police. Similar emphasis on not involving the police emerged for physical abuse<sup>147</sup> and unintentional neglect.<sup>148</sup> None of the other reasons for not reporting garnered a similar level of endorsement.

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144. Out of the twenty-five participants who said they would not report the potential financial abuse incident perpetrated by an informal caregiver, eighteen endorsed, "I would prefer to deal with matters such as this without involving the police."

145. Out of the twenty-three participants who said they would not report the potential emotional abuse incident perpetrated by a formal caregiver, seventeen endorsed, "I would prefer to deal with matters such as this without involving the police."

146. Out of the thirty participants who said they would not report the potential emotional abuse incident perpetrated by an informal caregiver, twenty endorsed, "I would prefer to deal with matters such as this without involving the police."

147. Out of the twelve participants who said they would not report the potential physical abuse incident perpetrated by a formal caregiver, eleven (ninety-two percent) endorsed, "I would prefer to deal with matters such as this without involving the police." Out of the twenty participants who said they would not report the potential physical abuse incident perpetrated by an informal caregiver, thirteen (sixty-five percent) endorsed, "I would prefer to deal with matters such as this without involving the police."

148. Out of the twenty participants who said they would not report the potential unintentional neglect incident perpetrated by a formal caregiver, fourteen (seventy percent) endorsed, "I would prefer to deal with matters such as this without involving the police." Out of the twenty participants who said they would not report the potential unintentional neglect incident perpetrated by an informal caregiver, twelve (sixty percent) endorsed, "I would prefer to deal with matters such as this without involving the police."

3. **INSTITUTIONS OR INDIVIDUALS WITH WHOM THE OLDER ADULT MIGHT DISCUSS MALTREATMENT**

In an effort to explore other potential resources for older adults, we also asked our participants who they would likely tell if something like the situation in the description occurred, regardless of whether they also told the police.<sup>149</sup> For this question, participants could again select as many response options as desired; thus percentages represent the frequency that each response was selected from the total number of selected responses across all participants. Importantly, across caregiver type and maltreatment type, family members were consistently the most often cited individuals.

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149. The question was phrased as follows: Is there anyone else you might discuss this scenario with? [yes/no]. If yes, who? (check all that apply). *See infra* Appendix (describing complete question wording).

TABLE 3: OTHER PERSONS BESIDES THE POLICE WITH WHOM  
THE BEHAVIOR WOULD BE DISCUSSED BY POTENTIAL  
MALTREATMENT TYPE AND CAREGIVER TYPE

Maltreatment Type	Discuss the Behavior with	% Within Informal Caregiver	% within Formal Caregiver
Sexual Abuse	Family member	66	0
	Member of the clergy	22	0
	Anonymous hotline	31	0
	Doctor	50	0
	Other	19	0
Financial Abuse	Family member	78	92
	Member of the clergy	16	12
	Anonymous hotline	16	28
	Doctor	0	24
	Other	19	32
Emotional Abuse	Family member	72	76
	Member of the clergy	19	20
	Anonymous hotline	6	20
	Doctor	13	16
	Other	19	36
Physical Abuse	Family member	66	88
	Member of the clergy	22	20
	Anonymous hotline	13	20
	Doctor	25	60
	Other	25	44
Unintentional Neglect	Family member	72	84
	Member of the clergy	28	20
	Anonymous hotline	10	16
	Doctor	34	28
	Other	16	24
Intentional Neglect	Family member	78	92
	Member of the clergy	34	28
	Anonymous hotline	22	40
	Doctor	59	64
	Other	25	36

## VII. Discussion and Analysis of Study Results

With the older adult population increasing in numbers and age, incidences of abuse and legislated responses to such abuse are also increasing. Many states have chosen to mirror older adult protection laws from their child protection systems. This application of the *parens patriae* notion serves to protect older adults as vulnerable persons but also undermines older adults' autonomy and self-

determination. Relying on self-reporting of abuse would be one way to presume competency until proven otherwise, but we know very little about how older adults view possible abuse situations and their perceptions of reporting such abuse.

#### A. Moral and Legal Wrongfulness

This study explored how older adults perceive the general legal and moral wrongfulness of situations of potential abuse. One reason for mandatory reporting laws would be that older adults need the protection because they would not understand that abuse is unacceptable. Such a notion, borrowed from the child abuse policies, assumes that older adults are just like children and in need of protection because of their age. Although the study questions did not probe beyond the simple questions of generic legal and moral wrongfulness, the older adults from our sample do understand that maltreatment is wrong—both morally and legally. This was true for different types of maltreatment across both formal and informal caregivers.<sup>150</sup> Financial abuse, emotional abuse, and unintentional neglect deserve additional exploration. For financial abuse, the participants saw a caregiver misrepresenting the use of the older adult's money as more legally wrong when it was a formal rather than an informal caregiver. This may be because the older adults felt that they would have given the money to the informal caregiver without the need for the caregiver to lie because the caregiver was their adult child. On the other hand, it could be that the participants did not understand that a family member stealing is just as legally wrong as a non-family member stealing. There is no way to know from the current study, but it raises an important area of future research consideration, especially because of the prevalence of financial abuse and the stark difference between the older adults' and children's systems regarding financial abuse.<sup>151</sup>

The moral and legal wrongfulness of emotional abuse and unintentional neglect should also be investigated further with much richer scenarios and deeper questions. The scenarios for both of these potential types of abuse were relatively weak. Although they both involved caregiver behaviors that technically could have been characterized as maltreatment, without information about the intensity, duration, and

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150. See *supra* Table 1.

151. See *supra* notes 63–70 and accompanying text.

frequency, the scenarios have questionable legal importance and effect. Nonetheless, the potential unintentional neglect perpetrated by a formal caregiver was seen as significantly less morally wrong than when an informal caregiver was involved. Perhaps the participants were willing to make greater allowances for the adult child rather than the formal caregiver. That idea, however, carries an underlying notion that older adults may believe that they do not deserve as attentive a level of care when it is provided by an informal caregiver. Clearly, older adults' moral and legal notions concerning potential abuse provide a ripe area for examination inasmuch as they speak to the viability of empowering older adults with the responsibility of self-reporting.

### **B. Reporting**

The study results also suggest that, in general, the participants thought they would be more likely to report abuse when it occurred in a formal caregiving situation as opposed to an informal caregiving situation, with both the sexual and financial abuse garnering differences. Financial abuse in particular was viewed very differently when a formal versus informal caregiver was involved. Importantly, the descriptions were identical except for the perpetrator of the abuse. For the financial abuse situation, the caregiver was described as having had the older adult write a check and telling the older adult that it was to buy a gift for the older adult's grandchild, but it was actually to benefit the caregiver. Every participant<sup>152</sup> who read this scenario in the formal caregiving condition thought they would be likely to report the abuse; whereas, less than one-quarter<sup>153</sup> thought they would report when it was an informal caregiver. Additionally, a number of participants who said they would not report the financial abuse perpetrated by an informal caregiver did so because they did not want to get the police involved in matters such as this, they did not think the police would do anything about it, or they did not think the behavior needed to be reported.

Why might there be such a discrepancy in projected reporting? Apparently it is not because they viewed the behavior as significantly

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152. See *supra* Table 2 (noting that 100% of participants would report financial abuse by formal caregiver).

153. See *supra* Table 2 (noting that 21.9% of participants would report financial abuse by informal caregiver).

more or less morally wrong when perpetrated by either a formal or an informal caregiver.<sup>154</sup> One reason for the discrepancy is the very different context between child abuse and older adult abuse with regard to financial abuse. Children normally do not possess any amount of financial wealth, which makes financial abuse a practical impossibility. Older adults, even those who are not particularly wealthy, generally have amassed wealth in their home's equity and savings.<sup>155</sup> This inherent difference between children and older adults creates a new situation of abuse that has not been discussed in child abuse settings. The differences in projected reporting noted in the study may be due to lack of awareness by older adults that this would be abuse when it occurs in an informal caregiving situation.

For the sexual abuse situation, once again we see significant differences between projected reporting behaviors when a formal versus informal caregiver was described. The respondents read a description of a caregiver who touched the older adult "in a sexual manner" without the consent of the older adult.<sup>156</sup> There seems no readily apparent reason why an informal caregiver's behavior would lead to less reporting. In fact, sexual abuse by formal and informal caregivers was seen as similarly morally and legally wrong.<sup>157</sup> The only differences seemed to be a general conception that the behavior was not reportable or that the police would not do anything about it.<sup>158</sup> Clearly, this is an area in need of further examination. It may be that the participants recognized that embarrassment and shame<sup>159</sup> would result, especially with an adult child as the perpetrator of such abuse.

Although the differences were not significant, respondents reported a lower likelihood of reporting neglect (unintentional and intentional) when a formal caregiver was involved.<sup>160</sup> This difference may be due to the knowledge that in a formal caregiving situation, such as an assisted living facility, there would be other caregivers involved who would presumably be able to provide for the older adult

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154. See *supra* Table 1 and Part VII.A.

155. Dessin, *Financial Abuse of the Elderly*, *supra* note 38, at 301-02.

156. See Appendix.

157. See *supra* Table 1.

158. See *supra* Table 2.

159. See Barer, *supra* note 125, at 373.

160. See *supra* Table 2.

when a neglectful caregiver is off duty.<sup>161</sup> This study cannot answer that question, but when the participants were asked about how morally wrong the behaviors were, they saw the unintentional neglect of an informal caregiver as significantly more morally wrong than that of a formal caregiver.<sup>162</sup>

It is clear that older adults often do not want to involve the police in potential maltreatment situations and see family members as being a source of protection and a place to turn in situations of abuse. Participants consistently indicated that they would tell a family member if they found themselves in this kind of a situation. A natural next step in this line of work would be determining the attitudes of family members and their understanding or willingness to report maltreatment.

### C. Study Limitations

Clearly, the current study was a small sample study with a limited scope. One problem is that the respondents were not living in either type of caregiving situation and therefore may think they would report even though they might not. Of course, that would predict a “ceiling effect,” but that is not necessarily what the study found.<sup>163</sup> Although there existed some variation and differences between the formal and informal caregivers, we concede that projected reporting rates are probably higher than they actually would be if all of the ramifications for reporting were present.

Also, the outcomes from the different scenarios would likely be very different. In other words, the type of abuse makes it inherently more or less serious even without a description of the outcome. Withholding food will have a very different outcome than taking some money or saying something that embarrassed the older adult. Of course, this is true in real life also, but state statutes often make different types of maltreatment seem equivalent. Additionally, the two caregiving situations were not exactly the same—one was at the per-

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161. Our study cannot answer this exact question, but future work could compare an informal versus a formal caregiver both providing services to the older adult in the older adult's home.

162. See *supra* Table 1.

163. In the current research, a ceiling effect would mean that the majority of respondents would have indicated that they would report abuse in all of the situations. However, we found that there was variation in respondents' predicted reporting.

son's home and one was in a facility. Although people traditionally think of older adult abuse as occurring within an institutional setting, a home setting is the most common place for abuse to occur.<sup>164</sup> The institutional setting would inherently involve other people (e.g., other care providers and residents), but the informal at-home caregiving situation may not. A better comparison might have been an informal family member caregiver compared to a formal paid caregiver both taking care of the older adult in the older adult's home.

Despite these limitations, the current study provides a glimpse into older adults' views on projected self-reporting of abuse. If scholars are to argue that mandatory reporting laws for older adult abuse are problematic, then alternative protections are needed. One such alternative is empowering the older adults to report; this research suggests that there is work to be done in educating older adults about their rights and appropriate expectations for care, but it would seem that it can be done.

#### D. Where Do We Go from Here?

Mandatory reporting is one pathway in attempting to curb older adult maltreatment, but it is fraught with problems that result in subjugating personal freedoms.<sup>165</sup> For children and incapacitated adults, we certainly need a way to ensure maximum protections. For adults who are simply of a certain age and not incapacitated, we seem to have jumped to the troubling conclusion that they also need similar care and protection. One reason for this paternalistic approach is our societal bias against the aged. Ageism is prevalent and pervasive in U.S. culture. Such bias assumes that older adults are incompetent,<sup>166</sup> and such assumptions seem to be an underlying reason why the law "needs" to provide protection.

Of course, proponents of mandatory reporting statutes cite the statutes as not only an effective way to identify victims who need services, but also as a useful tool for generating data that can bring the problem of older adult maltreatment into society's consciousness so that funding for services may increase.<sup>167</sup> There are also cited benefits to mandatory reporting from the perspective of medical profession-

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164. TEASTER ET AL., *supra* note 10, at 6, 19–20.

165. See *supra* notes 61–63, 73–88 and accompanying text.

166. See generally Fiske et al., *supra* note 82.

167. Salend et al., *supra* note 119, at 66.



als.<sup>168</sup> Often, because of ethical concerns for confidentiality, there is vacillation between whether to address the abuse or ignore it, but in states where reporting is mandatory medical professionals do not have to make the difficult ethical decision of whether or not to report.<sup>169</sup> Some empirical research also supports the contention that mandatory reporting statutes are beneficial. For example, a national study that examined domestic abuse in general suggested that states with mandatory reporting statutes are more likely to investigate cases.<sup>170</sup> These “benefits” of the mandatory reporting requirements are beneficial to others<sup>171</sup>—service providers receive funding, ethical dilemmas are simplified for physicians, and investigators receive more business. The benefits to individual older adults<sup>172</sup> are not as readily apparent, especially considering the rights that are violated by mandatory reporting.<sup>173</sup>

#### E. Conclusion

Our society is rapidly aging, and we are faced with resulting crises from different directions. One fear is that our older adults will be maltreated. It is often said that a society can be measured by the way it treats its old and vulnerable. We believe we need to consider not only avoiding abuse at the hands of caregivers but also avoiding dehumanization at the hands of the law. Our study suggests that one such way may be to transmute the power of reporting abuse from others into the hands of older adults.

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168. Macolini, *supra* note 80, at 355 (discussing arguments in favor of mandatory reporting in regard to professionals).

169. *Id.*

170. Gerald J. Jogerst et al., *Domestic Elder Abuse and the Law*, 93 AM. J. PUB. HEALTH 2131, 2135 (2003).

171. See Nina A. Kohn, *The Lawyer's Role in Fostering an Elder Rights Movement*, 37 WM. MITCHELL L. REV. 49, 58 (2011) (discussing how often people fighting for the rights of older adults also receive benefits themselves); Macolini, *supra* note 80, at 355.

172. See Kohn, *supra* note 171, at 58–59 (noting how the negative right that mandatory reporting affects causes the benefits of older adults and others to diverge).

173. See Kohn, *supra* note 13, at 1055.

APPENDIX:  
SCENARIOS AND QUESTIONS

**Formal/ [Informal] Conditions:**

Imagine you are an elderly person who lives in an assisted living facility [*who lives with your adult child*]. You have had a few problems with your physical health and recently had hip surgery. You underwent physical therapy and have recovered quite well. You do not have any noticeable mental health problems, though you are sometimes forgetful.

I would like for you to imagine yourself in this scenario. Please think about the following experiences that could happen while at an assisted living facility [*living with your adult child*] and answer the questions that follow each scenario.<sup>174</sup>

Scenario 1: A caregiver who works at the facility [*Your adult child*] deprived you of food, water, clean clothing, and bedding.<sup>175</sup>

Scenario 2: A caregiver who works at the facility [*Your adult child*] forgot to give you food, water, clean clothing, and bedding.<sup>176</sup>

Scenario 3: A caregiver who works at the facility [*Your adult child*] shoved you when you would not go into your room, resulting in physical pain.<sup>177</sup>

Scenario 4: A caregiver who works at the facility [*Your adult child*] yelled at you saying "you are always cranky," which made you feel humiliated and like a child.<sup>178</sup>

Scenario 5: A caregiver who works at the facility [*Your adult child*] had you write a check by telling you it was to buy your grandchild a gift, but it was actually to benefit the caregiver.<sup>179</sup>

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174. Participants were randomly assigned to either the formal condition or the informal condition. They read six scenarios concerning a formal caregiver or six scenarios concerning an informal caregiver.

175. Scenario 1 was the potential intentional neglect.

176. Scenario 2 was the potential unintentional neglect.

177. Scenario 3 was the potential physical abuse.

178. Scenario 4 was the potential emotional abuse.

179. Scenario 5 was the potential financial abuse.

Scenario 6: A caregiver who works at the facility [*Your adult child*] touched you in a sexual manner without your consent.<sup>180</sup>

**Questions:**<sup>181</sup>

1. Do you see this as morally wrong? Scale 1 to 8 (not at all to extremely)
2. Do you see this as a legally wrong? Scale 1 to 8 (not at all to extremely)
3. Would you tell the police about this behavior? [yes/no]
4. How likely would you be to report this scenario to the police?
5. If you indicated that you would not report the above incident to the police, what are your reasons? (check all that apply)
  - I did not consider the behavior of the employee [*adult child*] as behavior that needed to be reported
  - I do not think the police would do anything about it
  - I would prefer to deal with matters such as this without involving the police
  - I would not tell because I think employee [*adult child*] would eventually get what is coming to them
  - I would be embarrassed to tell anyone
  - I would fear retaliation by the employee [*adult child*]
  - I would not want to get the employee [*adult child*] in trouble
  - Other [open ended response]
6. Is there anyone else you might discuss this scenario with? [yes/no]
  - a. If yes, who? (check all that apply)
    - A family member (e.g., adult child, spouse)
    - A member of the clergy (e.g., priest, pastor, rabbi, etc.)
    - An anonymous hotline
    - My doctor
    - Other (please specify) [open ended response]

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180. Scenario 6 was the potential sexual abuse.

181. The questions followed each scenario so that the participants answered all of the questions for all six of the scenarios.