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DEPARTMENT OF JUSTICE**

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October 2, 2018

SENT VIA INTERDEPARTMENTAL MAIL

The Honorable Scott Walker  
Governor of Wisconsin  
Room 115 East, State Capitol

The Honorable Scott Fitzgerald  
Senate Majority Leader  
Room 211 South, State Capitol

The Honorable Jennifer Shilling  
Senate Minority Leader  
Room 206 South, State Capitol

The Honorable Robin Vos  
Assembly Speaker  
Room 217 West, State Capitol

The Honorable Gordon Hintz  
Assembly Minority Leader  
Room 201 West, State Capitol

Re: 2018 recommendations – the Attorney General’s Task Force on Elder Abuse

Dear Governor Walker, Majority Leader Fitzgerald, Minority Leader Shilling, Speaker Vos, and Minority Leader Hintz:

In August 2017, I assembled a multidisciplinary Task Force on Elder Abuse. Since then, we have made significant progress and I’m excited to share the details of our work with you.

The Task Force on Elder Abuse is made up of representatives from the Wisconsin Department of Justice (DOJ), Wisconsin Department of Health Services (DHS), Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP),

Wisconsin Department of Financial Institutions (DFI), the Wisconsin State Legislature, law enforcement, Wisconsin Court System, prosecutors, Board on Aging and Long Term Care, Wisconsin Bankers Association, and various crime victim services, adult protective services, senior living facilities, and senior citizen advocacy organizations.

This team of multidisciplinary professionals was tasked with studying the impact of elder abuse in Wisconsin and assessing ways to improve outcomes for the elderly population. In addition to developing strategies to address barriers in investigations and prosecutions of elder abuse, the task force worked to strengthen consumer protections for seniors and enhance cross-system communications.

These efforts could not come at a more critical time. We know that elder abuse is becoming all too common and reports of abuse are rapidly growing across the nation. Since 2001, there has been a staggering 160% increase in reported elder abuse in Wisconsin.<sup>1</sup> Devastatingly, this stunning growth likely only captures a portion of the elder abuse occurring in our state; research shows that for every reported case of elder abuse, 24 cases go unreported.<sup>2</sup>

These numbers are likely to only grow worse with Wisconsin's senior population set to increase by 72% in the coming decades. With that increase we will see the number of people with dementia double to an estimated 242,000 in the state impacted by the disease.<sup>3</sup> These factors will only present a whole new set of challenges, and we must act with expediency in the next legislative session to get ahead of this growing problem.

While the task force has been working on developing recommendations, DOJ has moved quickly to provide public safety tools to seniors and their loved ones.

- Creation of "Respect Your Elders, Report Abuse" public awareness campaign, first launched in January 2018 with radio ads, encourages citizens to report suspected elder abuse of any kind; teaches them how to recognize elder abuse; and connects victims with resources.
- Creation of a new website, [www.ReportElderAbuseWI.org](http://www.ReportElderAbuseWI.org) designed for elder abuse victims to use to report abuse and locate resources.

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<sup>1</sup> Bureau of Aging & Disability Resources, Wisconsin Department of Health Services

<sup>2</sup> Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University, & New York City Department for the Aging. (2011)

<sup>3</sup> Bureau of Aging & Disability Resources, Wisconsin Department of Health Services

- Expansion of “Dose of Reality,” a statewide prevention campaign designed to raise awareness about prescription drug abuse and its effect on the opioid epidemic, to include resources and information unique to seniors and their caregivers.
- Development of the “Safe Seniors Camera Program,” a new pilot project in Brown, Outagamie, Fond du Lac, and Winnebago counties that allows Wisconsin residents, who suspect a caregiver is abusing their loved one, to use a covert camera to provide surveillance over someone who may have been harmed by a caregiver in their residence.
- Developed and released a training video aimed at educating bank tellers and other banking professionals on how to spot financial elder abuse and report it. <https://www.youtube.com/watch?v=Gzm8XGxDpxY&feature=youtu.be>

Our work at DOJ has started to build awareness across the state on this important issue, but we must work together to truly address elder abuse on a larger scale. I hope you and other policymakers in the state will carefully consider the five recommendations my Task Force on Elder Abuse has developed and unanimously supported.

### **Recommendation 1**

The Task Force on Elder Abuse recommends the Legislature and Governor adopt model legislation in LRB 0385 and LRB 0386 that will provide financial advisors and financial institutions with a strengthened ability to block suspicious transactions of financial exploitation against older adults.

The Financial Exploitation Working Group of the Task Force reviewed laws that could enhance the protection of our state’s seniors. Many cases of financial exploitation are witnessed at financial institutions by frontline staff such as securities agents, and investment advisers. The Task Force developed legislation that will provide greater flexibility for these individuals to do the following:

- Provides for the ability to delay a transaction that has reasonable suspicion of financial exploitation.
- Protects the financial institution and financial advisors from litigation when they are acting in good faith to stop elder financial exploitation.
- Creates the ability for customers to create a list of trusted contacts that may be reached out to if there is reasonable suspicion that financial exploitation is occurring.

- Allows for refusal to accept a power of attorney who may be attempting to commit elder financial exploitation.

The Task Force members worked closely on developing the legislation in consultation with industry experts including DFI, Wisconsin Bankers Association, Credit Union League of Wisconsin, Securities Industry and Financial Markets Association, Financial Services Institute, National Association of Insurance & Financial Advisors – Wisconsin, Professional Insurance Agents of Wisconsin, and Independent Insurance Agents of Wisconsin.

### **Recommendation 2**

The Task Force on Elder Abuse recommends the DOJ identify and pilot an elder abuse supplemental incident report with law enforcement agencies across the state, to help ensure they are collecting needed evidence for a criminal prosecution of a suspect.

The Criminal Justice Response Working Group of the Task Force carefully studied tools that can be provided to law enforcement officers and prosecutors across the state, enhancing the criminal justice system's response to elder abuse through better documentation of cases. Many law enforcement agencies across the state utilize supplemental reports to aid them in investigating crimes including domestic violence.

The proposed form will ensure that Wisconsin's laws protecting the vulnerable are more effectively enforced. At law enforcement academies throughout Wisconsin, future officers receive training in responding to abuse of elders, adults, and individuals at risk. When officers leave the academy, however, many specialize in various and sundry duties not involving the elderly. For instance, many will work day-to-day in combating drugs and violent crime on our streets, rather than offenses that occur at, for instance, at a nursing home. This supplemental report provides those veteran officers with a reminder of the critical evidence and information needed when called upon to serve an elderly victim.

The information contained within this form was derived through a collaborative process with task force members and in consultation with multidisciplinary partners across the field, including law enforcement officers, victim advocates, and prosecutors, among others. In addition, the working group reviewed forms from other states including in California and Michigan as a guide to create an elder abuse and neglect supplemental incident form for Wisconsin law enforcement officer. The new tool will be a helpful tool in catching elder abuse and have law enforcement more equipped to respond to investigations.

### **Recommendation 3**

The Task Force on Elder Abuse recommends the Legislature and Governor adopt model legislation in LRB 0356 that makes a number of criminal law changes including increased penalties to signify that these are crimes against a vulnerable population, enhanced protections for older adults seeking restraining orders, streamlined court process to freeze assets of a defendant, and strengthening the penalties for physical elder abuse of an older adult.

The Criminal Justice Response Working Group of the Task Force worked with law enforcement, prosecutors, and victims service members to develop recommendations to criminal law changes. The group found that the laws needed to align better well with the statutes covering adult protective services. In addition, it was recognized that the crime of elder abuse should align closer with other vulnerable populations like the many important laws we have on child abuse.

The process a victim goes through can be trying and cumbersome. The Task Force developed policy recommendations that would help victims to better navigate the court system and help recoup financial losses in certain cases. The recommended changes include:

- Currently there is no enhanced penalty for a forcible sexual assault of an elderly person. This change would modify the law to require a sexual assault of person over age 60 to be Class B Felony.
- Bring the physical abuse of an elder person in line with the age definition of other statutes and remove the rebuttable presumption of age like is done in child abuse cases.

- Create an enhancer penalty for crimes against an elder that would allow that any crime where the victim is over age 60 can be enhanced depending on the severity of the crime by two years to six years.
- Create a mechanism in criminal law for freezing assets in elder financial abuse. If a person is charged with a property crime against an elderly person, the District Attorney may request the defendant's assets be seized for the purpose of preserving the assets for restitution for the victim.
- Remove barriers for a senior to seek a restraining order by allowing them to appear by telephone or audiovisual means.

#### **Recommendation 4**

The Task Force on Elder Abuse recommends that the Legislature and Governor adopt model legislation in LRB 0402 that strengthens the process for older victims and witnesses who may have declining health by allowing for expedited hearings and the ability to preserve testimony through a video-taped court hearing that would have the defendant present for cross-examination.

The Criminal Justice Response Working Group of the Task Force recognized that victims of elder abuse have a 300% higher risk of death when compared to those who have not experienced abuse.<sup>4</sup> Further, the ability for victims to recall important details is critical to the outcome of a court case. As degenerative brain diseases increase in populations, the system must be able to respond to the unique needs of an elderly victim's ability to testify.

The proposed changes by the Task Force would allow the local district attorney to request the court to conduct a hearing to record the testimony of the victim or witness. The hearing would have to be held within 60 days, provide the ability for the defense's right to cross examine the victim or witness, and allow the recorded testimony to be admissible at all subsequent court proceedings.

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<sup>4</sup> Dong, X, Simon, M., Mendes de Leon, C., Fulmer, T., Beck, T., Hebert, L. (2009). Elder self-neglect and abuse and mortality risk in a community-dwelling population. *Journal of the American Medical Association*

### **Recommendation 5**

The Task Force on Elder Abuse recommends that DOJ creates a specialized elder abuse team that would work to mirror the success of other states and jurisdictions across the United States. This team would have five full-time positions including a prosecutor, three investigators, and a financial auditor.

While studying the barriers to investigations and prosecutions of elder abuse, the Criminal Justice Response Working Group of the Task Force identified that many of these cases are difficult and complex due to the nature of crimes with large financial records, victims being abused by family members or individual's in a position of trust, and reluctant victims who often do not want to work with the criminal justice system. The Task Force recommends that to assist law enforcement and prosecutors across the state, DOJ should create specialized positions that are dedicated to advancing elder abuse cases in the criminal justice system.

Many states and major metropolitan jurisdictions have recognized that there is a gap in this area in our criminal justice system and have created specialized units and positions within their departments to address the issue. The State of Georgia provided a specialized prosecutor for the Prosecuting Attorneys' Council of Georgia and an elder abuse investigative unit in their Georgia Bureau of Investigation. Since the inception of these positions the number of charges quadrupled from 366 charges issued in 2010 to 2,082 charges in 2016.

The investment of approximately \$500,000 annually for this team will provide much needed relief and expertise to local jurisdictions in elder abuse cases. Most importantly it will advance the primary goal of providing justice to the thousands of reported elder abuse cases annually in Wisconsin by adding boots on the ground with the expertise to pursue these cases.

The creation of the team includes one Assistant Attorney General as an Elder Abuse Resource Prosecutor, three Division of Criminal Investigation Elder Abuse Special Agents, and one Division of Criminal Investigation financial analyst. The mission of the elder abuse team will be to lead investigations, prosecute cases, provide expert advice to local law enforcement, and develop trainings for criminal justice professionals across Wisconsin.

Governor Walker, Majority Leader Fitzgerald, Minority Leader Shilling,  
Speaker Vos, and Minority Leader Hintz  
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These recommendations are a great start to the Task Force on Elder Abuse's efforts in its first year of existence. We will continue our work and will be a resource to you as we work together to address this vital issue.

Thank you in advance for your consideration of these items. We cannot wait to do better for our elderly loved ones. With this rapidly growing population, we must act with urgency to protect our loved ones, and I look forward to working with you on this critical issue for Wisconsin seniors and their families.

Very truly yours,



Brad D. Schimel  
Wisconsin Attorney General

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Enclosure

CC via email only:

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