

Vulnerable Adult Justice Project: Advocating for Solutions

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The Vulnerable Adult Act, Minn. Stat. § 626.557, governs Minnesota's system to combat abuse, neglect, and financial exploitation of people over the age of 18 who are at risk of harm because of illness or disability. The law, first passed in 1980 and substantially revised in 1995, combines law enforcement, social services, and health care professionals in a framework of prevention, reporting, and, when called for, protection for victims, regulatory actions, and criminal prosecutions.

In 2010, more than 22,000 reports of adult maltreatment were made to adult protective services agencies in Minnesota.¹ "Maltreatment," as defined in the state's Vulnerable Adult Act, is an inclusive term for abuse, neglect, or financial exploitation. Reports of suspected crimes against vulnerable adults, made directly to law enforcement agencies, add an untold number of cases. The information is unavailable from a single source and cannot be ascertained easily from current maltreatment data systems.

One of the significant challenges faced by professionals and affected families is that the field of vulnerable adult protection lags behind the child protection and domestic violence fields in data, resources, and best practices. As a policy issue, vulnerable adult maltreatment did not reach the public eye until the 1970s. Equally clear is that effective work on maltreatment cases can be complicated by disparate systems and incompatible terminology. Anetzberger and Balaswamy, in the first national study of State Elder Abuse Summits, describe "complex and pervasive" issues that require "planning and collective action at multiple levels. Altering the current status of elder abuse cannot rest with a single organization, discipline, or system."²

Moving beyond singular approaches is essential to improved response. The Vulnerable Adult Justice Project (VAJP) in Minnesota is intended to serve at-risk adults by creating a system that is more than the sum of its parts. The shared purpose of the VAJP is to maintain a regular forum where front line, supervisory, and policy specialists in vulnerable adult protection can meet to talk about gaps and advocate for solutions.

Beginning with a Legislative Focus

The VAJP began in late 2007 as a diverse stakeholder group committed to reforming the Vulnerable Adult Act and related laws. Its initial legislative effort, the product of months of consensus building, resulted in Chapter 119, Laws of Minnesota, 2009. The legislation, which took effect August 1, 2009, tackled the growing problem of financial exploitation, expanded community notification when vulnerable adults are missing, and established the model for a streamlined reporting and response system. The group began related efforts that year to raise public awareness of protecting vulnerable adults by wide distribution of information, posters and pocket cards, to improve the detection and reporting of suspected vulnerable adult abuse.

Profile and Participation

The VAJP brings together expertise from the perspectives and professions whose mission includes safeguarding and advocating for vulnerable adults. These include public advocacy organizations (Ombudsman for Long-Term Care, Ombudsman for Mental Health and Developmental Disabilities, Disability Law Center—the federal protection and advocacy agency); elder and disability organizations (AARP, Alzheimer’s Association, ElderCare Rights Alliance, The ARC); health care providers (Care Providers of MN, Aging Services of MN, MN Home Care Association, MN Hospital Association, Volunteers of America-MN); the Metro Area Agency on Aging; MN Association for Guardianship and Conservatorship; labor unions; city prosecutors; county adult protection and prosecutors; the Office of the Attorney General; Department of Health and the Department of Human Services; the private bar (elder law attorneys); and law schools (University of St. Thomas School of Law and William Mitchell College of Law). The VAJP is administratively housed at the Center for Elder Justice and Policy at the William Mitchell College of Law. Students at the center have opportunities to do supervised legal research on related policy issues, and the author of this article serves as its coordinator.

Broad Purpose

Describing the VAJP as a multidisciplinary collaboration conveys a picture, not a purpose. The purpose of the VAJP, adopted in October 2009 and reaffirmed a year later, is to maintain a regular forum where diverse professionals in vulnerable adult protection can meet to:

- Identify service gaps in the protection of vulnerable adults,
- Identify gaps and flaws in the underlying public policies,
- Identify, weigh, debate, and advocate for proposed solutions,
- Educate public officials about current and emerging issues through presentations and publications,
- Invite public officials to present data, updates on current policy, and proposals for policy change at stakeholder meetings,
- Actively promote changes in Minnesota laws, rules, and policies to protect vulnerable adults and seek redress for victims,
- Identify issues where additional research is necessary and engage Center for Elder Justice and Policy students in the research,
- Foster good working relationships and information about initiatives across jurisdictions and agencies, and
- Conduct and cooperate in professional education and public awareness efforts.

2011 State Legislative Initiative

In the past year, VAJP committees focused on issues in the criminal code, on protections, and on jurisdictional questions. The public policy recommendations made by these committees to the full group resulted in consensus on the following items, which were proposed earlier this year as the 2011 VAJP Legislative Initiative. The bill had its legislative introduction in February, with tracking numbers SF195 and HF447 for the companion files. The chief senate author is Sen. Warren Limmer (R-Maple Grove) and the chief house author is Rep. Tim Kelly (R-Red Wing).³

Proposed Changes to the Criminal Code:

The bill standardizes the penalty for assault of a vulnerable adult as a gross misdemeanor. Defined caregivers face a gross misdemeanor under current law while other assailants who know or have reason to know the vulnerability of the victim face a lesser penalty.⁴ Minn. Stat. § 609.224 subdivision 2 paragraph (c) is repealed and replaced with a new subdivision 8 in § 609.2231 that (a) refers to the definition of vulnerable adult in the criminal code,⁵ and states,

(b) Whoever assaults and inflicts demonstrable bodily harm on a vulnerable adult, knowing or having reason to know that the person is a vulnerable adult, is guilty of a gross misdemeanor. This new subdivision encompasses cases where a family member, neighbor, or other person targets a victim because of his or her vulnerability.

Next, the bill makes the crime of sexual contact with or penetration of a facility resident, patient, or client by a caregiver or service provider employed by the facility⁶ a registrable offense under the predatory offender registration law to conform to the current treatment of comparable offenses in Minn. Stat. § 243.166 subdivision 1b. Notably, the predatory offender registry was enacted in 1991, in response to the Jacob Wetterling abduction.⁷ The law was amplified to include crimes committed against adults in 1993 and 1994.⁸ However, criminal abuse of a vulnerable adult, as defined in Minn. Stat. § 609.2325 subdivision 1 paragraph (b), did not become law until 1995.

Both proposed changes to the criminal code have an August 1, 2011, effective date and are applicable to crimes committed on or after that date.

Proposed Changes to Support Vulnerable Adults in Administrative Forums:

Minnesota law grants a range of appeals to people who are found to have harmed a vulnerable adult. The only review available to the vulnerable adult who contests an investigative finding is the Vulnerable Adult Maltreatment Review Panel.⁹ The following amendments are intended to balance the scales.

The bill strengthens the panel's methods of review to ensure a thorough case examination when a vulnerable adult subject of a case challenges findings that the reported maltreatment was not substantiated. Additionally, a vulnerable adult or his or her representative will be entitled to receive a detailed explanation from the investigative agency when the panel's review agrees with the finding. This proposal further adds a representative of county human services to the panel. The panel's composition under current law is the Office of Ombudsman for Long-Term Care, the Office of Ombudsman for Mental Health and Developmental Disabilities, the Minnesota Board on Aging, the Minnesota Department of Health, and the Minnesota Department of Human Services. The state departments are two of the three regulatory/administrative lead investigative agencies for vulnerable adult allegations. Counties which are in the third category, investigated 45 percent of the vulnerable adult cases in 2010.¹⁰

The bill further introduces means for the vulnerable adult who is the subject of a substantiated maltreatment case and certain legal representatives to have a voice in administrative hearings when a substantiated perpetrator appeals. Under current law, the vulnerable adult may be called as a witness in the proceedings. New details in the conduct of hearings guarantee that the vulnerable adult or the individual's legal representative will receive notice of the hearing by certified mail and will be invited to submit a written statement to the human services referee. That written statement will be made a part of the record and considered in deciding the appeal.

Additionally, the lead investigative agency, which is in the position of arguing that the maltreatment finding hold, is encouraged to consider including the vulnerable adult as a witness, barring its declaration that the appearance would be detrimental to the vulnerable adult. The changes are equally extended to contested case hearings under chapter 245A or 245C¹¹ before an administrative law judge with a new subdivision 21 in the Vulnerable Adult Act.¹²

Improved Information about Reports and Investigations:

The revisions direct that both guardians and health care agents receive information about a maltreatment investigation of a vulnerable adult, pursuant to their duties given by the vulnerable adult

or court. The reality of substitute decision making for vulnerable adults is that those with a guardian are in the minority, while those who have an appointed health care agent are growing in prevalence.

Another question addressed by the Vulnerable Adult Justice Project in the last year was how to support protective services for vulnerable adults in Indian Country. Under current Minnesota law, county adult protection units may establish multidisciplinary adult protection teams.¹³ The basic composition of the team is defined in the law with additional entities that counties may choose to include. The proposed legislation adds “representatives from local tribal governments” to the discretionary list, with a goal of promoting mutually beneficial working relationships.

Finally, the bill updates the definitions of lead agencies and their investigative jurisdictions that have been in place since the 1995 amendments to the Vulnerable Adult Act.¹⁴ The 2011 bill clarifies the jurisdictions of licensing agencies and counties for investigating maltreatment reports by using plainer, contemporary terms for service providers. The bill further changes the term “lead agency” to “lead investigative agency” in vulnerable adult law to distinguish it from many other uses of “lead agency” in state statutes.

More information about VAJP meeting dates, historical documents, and related activities of the Center for Elder Justice and Policy is online at <http://mnvac.pbworks.com/w/page/14063950/FrontPage>.

¹ Minnesota Department of Human Services Data Bank, St. Paul, MN, February 4, 2011.

² Georgia J. Anetzberger, Shantha Balaswamy, *Elder Abuse Awareness and Action: The Role of State Summits*, *Journal of Elder Abuse & Neglect*, 22, 180-90 (2010) at 181.

³ The proposed legislation is in process at the time of this writing and has been well received in committee hearings to date. Websites of the Minnesota Legislature, www.house.mn and www.senate.mn, are the sources for the current status of HF447 and SF195.

⁴ Minn. Stat. § 609.224 subdivision 2 paragraph (c).

⁵ Minn. Stat. § 609.232, subdivision 11.

⁶ Minn. Stat. § 609.2325 subdivision 1 paragraph (b).

⁷ 1991 c 285 s 3.

⁸ 1993 c 326 art 10 s 1-7; 1994 c 636 art 4 s 5-8.

⁹ Minn. Stat. § 256.021.

¹⁰ Minnesota Department of Human Services Data Bank, St. Paul, MN, February 4, 2011.

¹¹ Minn. Stat. Chapters 245A and 245C govern Department of Human Services Licensing and Background Studies.

¹² Minn. Stat. § 626.557 new subdivision 21.

¹³ Minn. Stat. § 626.5571 subdivision 1.

¹⁴ 1995 Ch229 art1 s22