



Maine Association of
Area Agencies on Aging

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TESTIMONY OF JESSICA MAURER, EXECUTIVE DIRECTOR
MAINE ASSOCIATION OF AREA AGENCIES ON AGING

Submitted March 13, 2013

Senator Gerzofsky, Representative Dion, and Members of the Criminal Justice and Public Safety Committee:

My name is Jessica Maurer and I am the Executive Director of the Maine Association of Area Agencies on Aging. I am also the immediate past Chair of the Maine Council for Elder Abuse Prevention.

Maine's Area Agencies on Aging (AAAs) support LD 527 and strongly urge its passage.

Maine's network of AAAs is the leading source of information for thousands of Maine seniors on aging, healthy living and benefits. Programs and outreach support services are designed to improve the physical, social and emotional well-being of older adults and to reduce the burden on families and caregivers. Our workers and volunteers know firsthand that elder abuse and financial exploitation happens every day in Maine and we are concerned that more is not done to hold accountable those who exploit and abuse our most vulnerable citizens.

Maine is the oldest state in the nation by median age. More than 300,000 people in Maine are over 60 years of age. Most have some reliable source of income, no matter how low that income may be, including retirement benefits or social security, and most have equity in homes they've owned for years.

It's estimated that about 38,000 people in Maine are affected with Alzheimer's disease and that thousands more suffer from other forms of dementia. One of the first symptoms of Alzheimer's disease is financial difficulty due to loss of abstract thinking. Thousands more elders are reliant on others for their daily care.

Sadly, access to assets and diminished capacity, whether physical or mental, makes seniors a target for abuse and exploitation. The statistics on elder abuse and exploitation are troubling and bear repeating.

In 2012, the Department of Justice estimated that 1 in 9 people over 60 will be a victim of elder abuse and exploitation – that's 33,000 people in Maine. Nearly all of the abuse and exploitation is perpetrated by a spouse, family member or caregiver. While neglect is the most common form of elder abuse, financial exploitation is the second most common. A 2011 MetLife study found that the annual financial loss by victims of elder financial abuse is estimated to be at least \$2.9 billion dollars. What may be shocking to some, people over 60 account for 18% of sexual

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assault victims – and we see this far too often in Maine.

Most cases of elder abuse and exploitation go undetected and unreported. Even when they are discovered and reported, very few cases make it to criminal prosecution. This is because the dynamics of elder abuse and exploitation are complex, making investigation and prosecution challenging.

Elder victims are usually reliant on perpetrators for their care. Because of this, they are unusually vulnerable. To gain compliance with their demands, perpetrators often use threats of withdrawal of love, care, medications, food, social interactions, and promises of institutionalization. Or, perpetrators merely take advantage of a victim with diminished cognition. Perpetrators sell assets, drain bank accounts and use regular income sources for their own needs, often leaving the victim's essential needs unmet. Even if victims know what is happening is wrong, they don't want to get a loved one in trouble by reporting the abuse or exploitation.

Usually abuse and exploitation is discovered and reported by someone other than the victim. It is often another family member who learns that the victim has been financially exploited or abused. When police investigate allegations of financial exploitation, far too often, the perpetrator is able to demonstrate, via a power of attorney or a name on a bank account or other legal document, that the victim consented to his or her use of funds, even if the use of funds has left the victim destitute. With proof established, the investigation usually ceases.

This is not a situation unique to Maine. All over the country, advocates, law enforcement officers and prosecutors are trying to find ways to protect seniors from further victimization and hold perpetrators accountable for their actions.

While other states have gone the route of enacting specific laws to criminalize elder financial exploitation and abuse, LD 527 takes a more measured approach by clarifying that when the defense of consent would otherwise negate an element of the crime, the defense is not available when the victim has dementia or when the consent is induced by undue influence.

Many states have passed laws adopting the concept of undue influence. It is not a form of elder abuse or a crime. Instead, it is recognized as a process or method used to commit financial or sexual exploitation. Undue influence is a legal term defining a mixture of duress and deception that is characterized by manipulation of a trusting relationship of a dependent person. It is sometimes described as a deceptive means to control another person's decision making. Ways in

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which undue influence might occur could be isolating the weaker person, promoting dependency or inducing fear and distrust of others.

It is well established that where consent can be used as a defense, it is only valid if the consent was legally effective. In order for the consent to be legally effective, the consent must have been given voluntarily by a person legally capable of consenting. While the current language in 17-A section 109 may appear to cover both dementia and undue influence, we believe that it is imperative to make specific reference to both in the statute given the scope of the problems we're seeing with financial exploitation in Maine.

Finally, LD 527 also proposes to increase the penalty for the misuse of entrusted property to a felony when the victim is elderly, incapacitated or dependent and the value of the property is greater than \$1,000. The felony penalties are consistent with those found in the Theft chapter.

So much of the financial exploitation we see involves victims who give financial powers of attorney to trusted family members who are suppose to manage their financial affairs for the benefit of the victims. Too often these documents permit gifting and these provisions are exploited to drain nearly all the assets of the victims. Powers of attorney create fiduciary relationships and when these powers are misused in violation of the duty created, it is the same as theft. Currently, regardless of the amounts misused, the crime can only be a misdemeanor. We support increasing penalties for this sort of crime to be consistent with penalties found in the theft provisions of the criminal code.

For these reasons, we urge passage of LD 527.

Thank you.

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