

**HOUSE . . . . . No. 6556**

**The Commonwealth of Massachusetts**

**LEGISLATIVE RESEARCH COUNCIL**

**Report Relative to**

**✓ CRIMINAL AND FRAUDULENT  
VICTIMIZATION OF THE ELDERLY**

**FOR SUMMARY, SEE  
TEXT IN BOLD FACE TYPE**

**March 30, 1981**

91681

**The Commonwealth of Massachusetts****ORDER AUTHORIZING STUDY**

(House, No. 6781 of 1980)

*Ordered*, That the Legislative Research Council undertake a study of Massachusetts statutes, other states' laws, federal laws, and related governmental programs designed to prevent the victimization of the elderly by fraudulent schemes and other criminal activity. Said Council shall report on the results of its study by filing a copy thereof with the Clerk of the House of Representatives on or before the third Wednesday of February in the year nineteen hundred and eighty-one.

*Adopted:*

*By the House of Representatives, June 27, 1980*

*By the Senate, in concurrence, June 30, 1980*

**U.S. Department of Justice  
National Institute of Justice**

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**The Commonwealth of Massachusetts**

**LETTER OF TRANSMITTAL TO THE  
SENATE AND HOUSE OF REPRESENTATIVES**

*To the Honorable Senate and House of Representatives:*

LADIES AND GENTLEMEN: — In compliance with the legislative directive in House, No. 6781 of 1980, the Legislative Research Council submits herewith a report prepared by the Legislative Research Bureau relative to criminal and fraudulent victimization of the elderly.

The Legislative Research Bureau is restricted by statute to "statistical research and fact-finding." Hence, this report contains only factual material without recommendations or legislative proposals by that Bureau. It does not necessarily reflect the opinions of the undersigned members of the Legislative Research Council.

Respectfully submitted,

**MEMBERS OF THE LEGISLATIVE RESEARCH COUNCIL**

Sen. ANNA P. BUCKLEY of Plymouth, *Chairman*  
Rep. MICHAEL J. LOMBARDI of Cambridge, *House Chairman*  
Sen. JOSEPH B. WALSH of Suffolk  
Sen. JOHN F. PARKER of Bristol  
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Rep. BRUCE N. FREEMAN of Chelmsford  
Rep. CHARLES DECAS of Wareham

**The Commonwealth of Massachusetts**

**LETTER OF TRANSMITTAL TO THE  
LEGISLATIVE RESEARCH COUNCIL**

*To the Members of the Legislative Research Council:*

LADIES AND GENTLEMEN: — House, No. 6781 to 1980, reprinted on the inside of the front cover, directed the Legislative Research Council to make an investigation and study of the laws of the Commonwealth, other state laws, federal laws and related governmental programs to prevent the victimization of elderly persons by fraudulent schemes and other criminal activities.

The Legislative Research Bureau submits herewith such a report. Its scope and content have been determined by statutory provisions which limit Bureau output to factual reports without recommendations. The preparation of this report was the primary responsibility of Thomas R. Asci of the Bureau staff.

Respectfully submitted,

**DANIEL M. O'SULLIVAN, Director**  
*Legislative Research Bureau*

**The Commonwealth of Massachusetts**

**CRIMINAL AND FRAUDULENT VICTIMIZATION  
OF THE ELDERLY**

**SUMMARY OF REPORT**

*Introduction*

Problems confronting the elderly population have been gaining increasing amounts of attention since the early 1970's. The whole range of criminal victimization problems that are common to other segments of the population often have an acute impact upon elderly individuals when they are the victims. Well-publicized muggings and brutal beatings of elderly citizens are particularly heinous and cast an appalling mood of fear over the elderly population. Purse snatching has also gained a great deal of publicity and the elderly are statistically one of the highest segments of the population victimized in this category.

Since elderly citizens are more vulnerable and fragile both physically and economically, the impact of crime can have deleterious affects. Elderly citizens do not have the money-making capacity to overcome a catastrophic loss. They are often underinsured for property loss and overinsured with expensive "medigap" insurance policies, which do not provide adequate coverage to warrant the high premiums charged.

Consumer related schemes such as medical quackery, hearing aid sales, eyeglass sales, retirement planning and investment swindles, land fraud, insurance schemes, auto repair, and countless other areas of complaint bilk the elderly out of billions of dollars annually.

There were hundreds of bills filed in the 1980 Massachusetts legislative session aimed directly at problems facing the elderly. These various bills were assigned to 13 different committees for consideration. Some of the subject areas which these bills covered included consumer protection, patients' and residents' rights, protective services, medigap insurance, rent subsidies, reverse annuity mortgages, and mandatory sentencing for violent crimes committed against the elderly.

*Demographic Trends*

On the national level, the number of older persons is expected to continue to increase significantly during the 1980's. However, the

growth rate will not be as marked as previous decades, because of the drop in the growth rate from 35 percent in the 1950's to 20 percent in the 1960's. From 1975 to 1990, the net increase in the over 65 population is expected to be 6.5 million, in the over 75 group, it is estimated to be 2.9 million.

On the basis of the 1970 Massachusetts state census, there were approximately 637,000 inhabitants over 65 (11.2%) out of a total state population of 5.689 million. In 1980, the elderly population over 65 years of age reached 720,000, or 12.6% of a total population of 5.728 million. The Office of State Health Planning has projected an elderly population of 748,000 for 1985. Estimates prepared by the Office of State Health Planning indicate that the elderly will comprise 12.7 percent (838,000) of a state population of 6.668 million in the year 2000.

Most older persons continue to live in family settings. The single most prevalent living arrangement for the over 65 population is the two member family — husband and wife living alone. Approximately 45 percent of people 65 and over live in the six largest populated states and in Florida which ranked eighth in inhabitants. The older population is becoming increasingly female dominant. In 1980, there were only 69 males for every 100 females over 65. Whites disproportionately outnumber blacks in the older population. Whereas 11 percent of the total white population is 65 and over, only 7.4 percent of the total black population is in this age group. By far the largest segment of the elderly population resides in urban areas of the country with large concentrations in core cities.

*Economic, Physical and Behavioral Consequences of Crime*

Crime against the elderly has often been described over the past few years as a problem of crisis proportions. There is a general perception that the elderly are disproportionately victimized, due in large part to their negative image as a "dependent" sector of society that the media, especially TV, have fostered. Current research, however, indicates that this view is generally inaccurate.

The available evidence from the National Crime Panel (NCP) and other victimization surveys concludes that victimization decreases with age and that persons over 65 have a much lower incidence of criminal victimization than persons below that age. In Boston, the

elderly 65 years of age or older were the victims in only six percent of the total estimated number of personal crimes as opposed to 26 percent for the 20-24 age group, and 23 percent for the 25-34 age group. When crimes of violence were examined, the aged were victims in only five percent of the total estimated incidents in this category. The age group 20-24 and 25-34 were estimated to be victims in 26 and 21 percent of the incidents. In the category of crimes of theft, once again the 65 years plus group represented only seven percent of the estimated victimization as opposed to 26 percent for the 20-24 age group and 24 percent for the 25-34 group.

Elderly people are more likely to be preyed upon rather than treated violently, while the opposite is true for younger victims. Robbery and burglary are the principal crimes experienced by older people while younger people are more likely to be victims of violent crimes such as assault and rape. This observation is true for all types of personal and household victimization incidents examined in the NCP Boston data; it is also generally true for 39 city level NCP surveys, except in a few cities where persons over 65 report more personal larceny with contact (purse snatching, pickpocketing) than persons under 65.

The evidence suggests that the elderly are less likely to be the victims of crime and that they lose less than other adults when absolute loss measures are applied, and they lose less than young people, but the same or more than other adults, when dollar losses from crime are adjusted for differences in monthly income. Also, the evidence suggests that the elderly are attacked less often than others; however, they are more likely to be injured when they are attacked. Additionally, they are more likely to experience internal injuries and cuts and bruises, and they generally incur larger medical expenses which can have deleterious affects on those living on a fixed income.

Studies indicate that the fear of crime among the elderly is much higher than among any other segment of the population. A Harris Poll revealed that, on a nationwide level, the highest concern among older Americans was the problem of crime — 23 percent of the respondents rated fear of crime as the most serious problem. Crime was rated higher than the problem of poor health, which followed by 21 percent. Fear of crime may rank highest among the elderly because they have fewer resources for coping with victimization and its consequences.

As a result of their fears, the elderly will often reduce any behavior or

activity which provides a street criminal with the opportunity to victimize them. However, this reduction is at the expense of a richness of life style, such as freedom to visit friends and relatives, to sit in the park, or to take walks in the neighborhood. For those older adults who are poor or sick, the life sustaining resources of shopping and medical care may be sharply curtailed by their fear of crime. Since these losses can block important social, physical and psychological needs, the final cost to the elderly of criminal victimization is beyond measurement.

Another type of crime perpetrated on the aged which many experts believe to be very important is that of fraud. The actual extent of fraud has been difficult for researchers to measure for several reasons. Fraud has not been uniformly defined by local law enforcement agencies, and therefore, records are probably not accurate. Also, it is believed that many victims of fraud either never suspect that they have been victimized or, probably more likely, they are reluctant to report it for fear of ridicule.

Some indication of the extent of fraud can be drawn from experiences in the State of California where it was found the elderly were more vulnerable to the nonviolent crime of fraud. The San Francisco and Los Angeles Police Departments have reported that more than 90 percent of the "bunco" (swindling by misrepresentation) victims in those cities were over 65, and that the vast majority of them were women. In addition to the common swindle, investigations by the state's district attorney's consumer fraud units, local law enforcement agencies and senior citizen committees concluded that consumer frauds involving supplementary health insurance and medical plans, mail order schemes, work-at-home offers, pyramid sales and auto and home repairs are also widespread.

Among consumer crimes, the aged, because of their unique physical problems, are more susceptible to the blandishments of vendors of medical quackery and related health schemes. In California, medical quackery was estimated to be a \$50 million a year business. Older persons were the victims in seven out of every ten cases of medical fraud coming to the attention of the state's criminal justice system. According to reports from California and hearings conducted by the United States Senate Subcommittee on Aging, the most common "get well quick" schemes included cures for cancer, arthritis, baldness, obesity and restoration of youthful vigor.



The typical environment of a current American inner city seems to be a decisive factor in determining the vulnerability of elderly people to many crimes. The general breakdown of the retail system servicing neighborhoods, declining property values and high transient rates produce fragmentation of inner city communities. The support systems that once existed in most inner city neighborhoods have been disrupted by increasingly mobile populations. Both novice and experienced offenders are aware of the opportunities such conditions offer them and take advantage of the situation.

A Kansas City study revealed that the elderly were chosen as crime targets not because of their age and perceived weakness, but because greed and speed of execution were more important to criminals when selecting victims. Age neither protects them nor necessarily makes them vulnerable unless they live in or are on the periphery of high crime areas.

#### *Exploitation of the Elderly*

Stereotypes that label the elderly as gullible and particularly vulnerable to fraud and consumer abuse have been challenged by a recent research report. When complaints of older persons have been compared with a matched group of randomly selected complaints from younger consumers, the sets of complaints were found to be similar. In general, the marketplace abuses affecting older persons were no different from those affecting the general population. Complaints filed with consumer protection agencies did not present a picture of shady "con artists" who make a specialty of defrauding the elderly. Most older consumers reporting to the public agencies studied appeared self-reliant and well-informed and were less likely to be duped than they were to be dissatisfied with purchase transactions and repair situations.

While the aged should not be regarded as helpless prey for those who would exploit them, the elderly differ from their younger counterparts in the intensity of the overall impact of such abuse on their lives and also in a greater reluctance to seek redress when an abuse occurs.

Monetary losses, inconveniences and hardships suffered by older persons in the marketplace seem to more seriously affect their outlook, sense of security, and well being. Their reluctance to report abuses may well be caused by the fear that they may be considered to have diminished competence because of their age.

#### *Medicinal Use by the Elderly*

Approximately 25 percent of all prescription medicines sold annually in the United States are purchased by persons who are 65 years of age and older. Given the fact that the elderly account for approximately 10 percent of the nation's total population, such volume indicates heavy drug usage among elderly Americans. Eighty-five percent of individuals 65 years and older suffer from one or more chronic disorders which often require one or more types of special medication.

Moreover, the elderly are the biggest users of pharmaceutical and over-the-counter drugs and this factor makes them particularly susceptible to promotional efforts by drug manufacturers and related industries, such as national and local retail pharmacy chains. The pharmaceutical industry spends about twenty cents of every dollar of sales on promotion and only about six cents of every dollar for research and development. These factors along with the elderly's relative unsophisticated view of the marketplace may account for the heavy drug consumption rate among the aged.

#### *Insurance*

The elderly are particularly vulnerable to unfair insurance promotions. They share with the general population a high level of ignorance as to what constitutes adequate coverage or what are appropriate insurance options. Adequate coverage is vital to take care of their health needs and to provide for burial expenses. Automobile insurance may be important, particularly to the disabled elderly, who rely heavily on this method of travel. The elderly may wish to leave some form of estate to their survivors and thus they may be susceptible to various life insurance promotions. Additionally, the elderly are prime targets of cancer insurance salesmen. Some four million policies were sold in 1979 and about 20 million policies are in force. Many of the 300 companies that sell the insurance rack up these impressive sales records by using scare tactics on elderly persons and high pressure advertisements.

Older Americans are sick three times as often and experience periods of suffering and recuperation three times that undergone by younger Americans. Their health bills, on average, are three times greater than younger Americans. These staggering health costs come at a time in life when having retired, senior citizens can expect to receive only half the income of their younger counterparts. While younger adults typically

may spend 10 percent of their income for health care, it is not uncommon for older Americans to spend 30 percent of their income in pursuit of needed health care.

Because of Medicare's restricted benefits, older Americans are fearful that catastrophic illnesses will wipe out their meager savings and leave them destitute. There is a great fear that even the cost of medication and treatment for chronic illness will become too large a burden to carry. There is a fear that they may become a burden to their families and loved ones. They are concerned that going on welfare — even though an increasingly large number of Americans must turn to Medicaid, the welfare medical program, to pay for the cost of their health care. This is particularly true for those who need nursing home care. Nursing home care is so expensive that most elderly quickly use up their assets and depend on Medicaid to defray future costs. Medicaid pays for about 46 percent of the nation's total nursing home bill.

Two thirds of American elderly have at least one "medigap" supplemental health insurance policy, many have two or more policies. There are an estimated 19 million such policies in force at the present time. Based on an average premium cost of \$200 a year, the elderly will spend almost \$4 billion on such policies annually.

Unfortunately, few elderly understand that the multiple policies they buy often contain a clause which says only one policy will pay. Very frequently, the policies which they have purchased are worthless. It is quite common for senior citizens to pay \$200 a year in premiums for a policy which will pay them no more than \$80 in benefits.

The simple fact is that no policy covers all of Medicare's gaps. Actually, the benefits of Medicare supplementary policies are rather limited. They account for only five percent of the average payment for health care. There are often long waiting periods before the elderly are eligible for full benefits, in addition to standard exclusions for various illnesses or diseases. It is quite common for insurance companies to reject a claim on the grounds that the claim is attributable to a prior disease or condition.

Supplementary policies have spawned numerous complaints to state departments of insurance and the Congress, particularly from senior citizens. Nearly a third of the complaints received by the Pennsylvania Department of Insurance in 1974 related to health insurance; only auto insurance generated more complaints. The Commissioner of Insurance

in that state reported that 46.9 percent of the complaints were valid and that the elderly account for a disproportionate share of these complaints. In 1977, New York and Florida received 57,000 and 34,000 complaints respectively, about 40 percent of which related to the sale of health insurance.

#### *Massachusetts Statutory Provisions*

The Attorney General's Office indicates that Massachusetts' aged are particularly vulnerable to incidents and episodes of vendor fraud especially relative to nursing home operators, doctors and pharmacists, medicaid fraud, patient abuse, medigap insurance, home improvement schemes, arson and violent crime. The Commonwealth has been a pioneer in the development of both consumer protective and "civil" rights legislation and as a consequence there is a variety of legal remedies and enforcement mechanisms available to the criminal justice system and regulatory agencies and the consumer. Some of the Commonwealth's General Laws which have greater application to the elderly and their specific problems are (1) regulation of business practices for consumer protection (G.L. c. 93A); (2) regulation of hearing aids (c. 93, s. 71 et seq.); (3) sale of generic drugs (c. 112, s. 12D) (4) compensation for victims of violent crimes (c. 258A); (5) insurance policies cancellable at age 65 (c. 175, s. 110H); (6) reduction in motor vehicle insurance rates for the elderly (c. 175E, s. 4); (7) speedy trial for persons 65 years of age or older (c. 231, s. 59F); (8) patients' and residents' rights (c. 111, s. 70E); and (9) readability of insurance forms (c. 175, s. 2B).

There is a relative absence of age specific law here in the Commonwealth. The approach that has been taken by Massachusetts and other states' lawmakers has resulted in enactment of consumer protection laws of general application, devoid of any bias or preference in the case of age, sex or other considerations. In the final analysis the elderly are not victims of any crime or fraudulent activity that cannot also happen to any other age group. Therefore, specific statutory protection may be unnecessary. In fact, in some cases it may be so discriminatory as to invite constitutional challenge on the grounds of denial of the equal protection of the law guaranteed by both the State and Federal constitutions.

In February of 1981, Governor Edward J. King submitted to the



Massachusetts Legislature a comprehensive anti-crime package. Included in this legislation is a bill requiring minimum mandatory sentences of imprisonment for repeat offenders convicted of certain violent street crimes committed against persons 65 years of age or older. It is the goal of this legislation to emphasize the "certainty" of punishment rather than the "severity" of punishment. Its proponents maintain that mandatory sentences will have a greater deterrent effect than harsher penalties which have been construed to be "excessive" punishment by some state courts.

As of mid-1980, at least eight states had statutes which imposed greater penal sanctions on offenders convicted of certain crimes against the elderly (Colo., Ha., Ill., La., Nev., R.I., Tenn., and Wis.).

#### *Department of Elder Affairs*

The Department of Elder Affairs is charged by statute with overseeing a number of programs for the elderly. It is the state's chief public advocate for the aged population. The Department coordinates its programs with other state agencies including the Departments of Public Health, Mental Health, Public Welfare, Social Service, Communities and Development, Energy, and Manpower Development. It assists in, and reviews, the drafting of regulations for programs such as long-term care facilities and nursing homes, medical care and public assistance, state aided housing for the elderly, homemaker agencies, transportation and services for the handicapped.

The Department of Elder Affairs is responsible for carrying out the mandates of the Older Americans Act of 1965 (as amended), the federal government's chief source of support for state and regional elder services. As the state agency designated to meet the responsibilities of the Act, the department has established 23 Area Agencies on Aging to plan and coordinate services for elders in cooperation with other appropriate elder advocacy groups and Councils on Aging. A 1978 amendment to the Older Americans Act mandates that each Area Agency on Aging in a state expend some portion of its federal dollars allocation on legal services for the elderly. These services are generally furnished to those with greatest need. Among specific services provided are those dealing with guardianship, conservatorship, consumer protection, tenant and landlord issues, and individual's rights under such public benefit laws as Medicaid, Social Security and Supplemen-

tal Security Income. Through the Department's Legal Services Division, this activity has been fashioned into a formal state network of service sources.

Two major projects organized by the Department of Elder Affairs in 1980 were the Silver-Haired Legislature and the Conference on Crime and the Elderly. The Silver-Haired Legislature was a mock legislative session held in the State House, where elderly activists were given a forum to discuss, propose and act on issues of concern and interest to the contemporary Massachusetts elderly population. The Conference on Crime and the Elderly developed policy recommendations concerning crime and the elderly in preparation for the 1981 White House Conference on Aging.

**The Commonwealth of Massachusetts**

**CRIMINAL AND FRAUDULENT VICTIMIZATION  
OF THE ELDERLY**

**CHAPTER I.  
INTRODUCTION**

*Origin of Study*

This report is submitted by the Legislative Research Council pursuant to House, No. 6781 of 1980, which was filed by Representative Michael J. Lombardi of Cambridge, House Chairman of the Legislative Research Council. That legislative directive, reprinted on the inside cover of this report, required the Council to make a study and investigation relative to the laws, practices and procedures of Massachusetts, other states, and the federal government designed to prevent victimization of the elderly by fraudulent schemes and other criminal activities. The order reflects increasing legislative concern relative to crime and other forms of injustices perpetrated against elderly citizens.

Problems confronting the elderly population have been gaining increasing amounts of attention since the early 1970's. The whole range of criminal victimization problems that are common to the other segments of the population often have an acute impact upon elderly individuals when they are the victims. The well-publicized muggings and brutal beatings of elderly citizens are particularly heinous and cast an appalling mood of fear over the elderly population. Purse snatching has also gained a great deal of publicity and the elderly are statistically one of the highest segments of the population victimized in this category. Purse snatchings are classified as misdemeanors in most states but these crimes often result in a frightening face to face encounter between the elderly woman and a vicious juvenile who is only concerned with the speed of execution of the crime. This often results in broken limbs, financial loss and psychological stress. However, these crimes are only part of the picture and the whole range of criminal and consumer problems hold particular relevance for the elderly.

Since elderly citizens are more vulnerable and fragile both physically and economically, the impact of crime can have deleterious affects. Elderly citizens do not have the money-making capacity to overcome a

catastrophic loss. They are often under-insured for property loss and over-insured with expensive "medigap" insurance policies, which do not provide adequate coverage to warrant the high premiums charged for such policies.

Other consumer-related schemes such as medical quackery, hearing aid sales, eyeglass sales, retirement planning and investment swindles, land fraud, insurance schemes, auto repair, and countless other areas of complaint, bilk the elderly out of billions of dollars annually. The fact that most elderly are living on fixed incomes adds to the burdens posed by this problem.

These are some of the reasons why the Legislature has directed the Council to study this issue. The purpose of this report is to outline and review the problems as they currently exist and relate some of the statutory and programmatic remedies available.

*Prior Legislative Proposals*

There were hundreds of bills filed in the 1980 session aimed directly at problems facing the elderly. These various bills were assigned to 13 different committees for consideration. The subject areas which these bills covered include consumer protection, patients' rights, protective services, age discrimination, and many other areas of special interest. Some of the more relevant bills concerned with criminal and consumer problems of the elderly will be categorized and examined in the following paragraphs in order to illustrate the magnitude of elderly-related issues and the trends and focus of those groups and individuals who are making an effort to amend current statutory law.

*Consumer Protection.* Senate, No. 84 and House, Nos. 3533, 4653, 5014 and 5067 were concerned with improving the readability of various types of "consumer contracts" an individual may enter into or sign. The various contracts mentioned in these bills are agreements or application forms for consumer credit, mortgages, retail installment sales or agreements, consumer loans or notes, personal, family and home-improvement loans, lease agreements and real estate sales.

House, Nos. 33, 42, 447 and 6960 were bills designed to make corrective changes in the law relative to cancellation of certain contracts signed at a place other than the seller's place of business. This is to protect the consumer from unfair sales pressure tactics used by many door to door salespersons.

House, No. 700 would have required reasonable reimbursement to rest homes for services provided. It would have prevented the nursing home rate setting commission from imposing ceilings or maximum rates of payment which do not reflect the actual costs of rest home providers. Senate, No. 504, alternatively, would have increased consumer participation in hospital and nursing home rate setting. It also would have established a formula to levy an assessment against hospitals and nursing homes in order to pay for the expenses incurred by consumer groups in connection with matters pending against such hospitals or nursing homes.

*Medigap Insurance.* House, No. 3015 would have limited the commission paid to an insurance agent to 25 percent of the annual premium paid during the first year of the policy and to 15 percent of the premium in any subsequent year.

*Rent Increases.* House, Nos. 4080 and 1195 would have prohibited rent increases to government subsidized elderly housing tenants due to cost of living increases in social security benefits. Housing authorities, when determining net income for the purpose of computing the rent of an elderly person of low income, could not apply increases in state supplemental payments and federal supplemental security income benefits received as a result of a rise in the United States Consumer Price Index.

*Increased Penalties for Crimes Against the Elderly.* Senate, Nos. 885 and 902 and House, Nos. 2630, 2640, 3607, 4171, 4197, 4338 and 4721 would have provided for various modifications in the penalties imposed for crimes against the elderly. This group of bills was one of the few age specific pieces of legislation which place the elderly in a distinct legal category based solely on their age. There is some uncertainty as to whether such age specific penalties are constitutional. Some sources contend that penalties required by these proposals are in violation of the Equal Protection Clause of the 14th Amendment to the Federal Constitution.

Some of these measures called for mandatory sentences for assault and battery and other crimes, and increased penalties in the form of longer sentences. A few bills included handicapped people under the same classification as the elderly. Other proposals would have required mandatory sentences for purse snatching, and one bill, House, No. 4338, would have exempted certain persons voluntarily assisting elderly persons from civil liability as a result of rendering emergency care.

*Compensation to Victims of Violent Crime.* Senate, Nos. 804 and 1012 and House, No. 1682 would have amended Chapter 258A of the General Laws which provides for compensation for victims of violent crimes. These bills would have required local law enforcement agencies or the relevant governmental units to inform the victim of the existence of the compensation program. One bill would have prevented rape victims from collecting any award under Chapter 258A while another bill would include the loss of personal property as a legitimate claim. Presently, the law does not cover the loss of personal property, only out-of-pocket loss. This legislation would have also required that unpaid bills for necessary medical or other services rendered to or for the victim of a violent crime be deducted from an award of compensation and paid directly to the person or institution rendering such service.

*Reverse Annuity Mortgages.* Under the terms of Senate, No. 19 and House, Nos. 446, 2171, 3132 and 5646 banks or credit unions would be authorized to issue reverse mortgages of up to 80 percent of the value of the real estate to homeowners who are 62 years of age or older and who occupy their homes. Such arrangements would have had to conform to the rules and regulations promulgated by the Commissioner of Banks and Banking and the terms of these loan agreements would be subject to that official's approval.

The purpose of this legislation is to permit elderly homeowners to convert the equity in property to liquid assets. Many elderly persons own a mortgage — free house, and yet have such little income that they cannot afford to pay their taxes and general living expenses. This legislation would allow the elderly homeowner to collect a periodic payment from the bank based on the value of his/her real estate. In return, the bank would have a claim on the property equal to the amount of money borrowed plus interest. Many problems would arise from these types of agreements in the event of neglect of the property, death of one of the mortgagors, or expiration of the loan period, which may result in the forced sale of the home and dislocation of the elderly resident.

*Cashing Government Checks.* House, No. 2561 would have required all banks doing business in the Commonwealth to cash government checks of persons over the age of 59 who provide identification that indicates they are senior citizens and residents of the community

in which the bank is located, whether or not they are customers of the bank.

*Elderly Abuse and Protection.* The issue of elderly abuse has been gaining increasing attention in the past several years, as indicated by the large number of bills filed on this subject annually. Some of the more comprehensive 1980 bills in this area include Senate, Nos. 490, 491, 515, 528, 541, 546, 548, 921 and 2162, and House, Nos. 74, 1455, 1638, 2016, 4525, 4709 and 4907.

None of the above proposals became law.

The problem of elderly abuse has prompted a number of studies, one of which was sponsored by the Department of Elder Affairs in 1979 entitled "Elder Abuse in Massachusetts: A Survey of Professionals and Paraprofessionals." Abuse is often caused by neglect of family members or staff in long-term care facilities, nursing homes or hospitals. Abuse can be violent or nonviolent; it can take the form of patient isolation, abandonment, drug misuse, nutritional neglect, mental harassment and countless other ways.

#### *Overview of the Problem*

Since the early 1970's, increasing emphasis has been placed on the issue of criminal victimization of elderly Americans. Concern at the national level was first prominently voiced at a 1971 hearing conducted by the Senate Subcommittee on Housing for the Elderly, a subcommittee of the Special Senate Committee on Aging. Although these hearings focused only on the problems of the elderly in federally funded housing projects, during the next year's subcommittee hearings speakers went beyond public housing and agreed that elderly persons "in private and public housing...are the most vulnerable victims of theft, violence, rowdyism, and outright terrorism."<sup>1</sup>

Crime against the elderly has often been described over the past few years as a problem of crisis proportions. Legislators, criminal justice system officials and the media have asserted that the elderly are disproportionately victimized, that crime against older persons is frequent, and that it is increasing. The impression often given is that the problem is a quantitative one: that large (and increasing) numbers of crimes are being committed against the elderly, and that crime intrudes on their lives more frequently than on the lives of younger persons.

1. Statement of Professor Fay Lomax Cook, School of Social Work, Loyola University, Chicago, Joint Hearings of the Senate Select Committee on Aging and the House Select Committee on Aging, "Research Into Crimes Against the Elderly Part II," 95th Congress, 2nd Session, February 1, 1978, pp. 63-73.

Current research, however, indicates that this view is generally inaccurate. The best available evidence — from the National Crime Panel (NCP) and other victimization surveys — is that victimization rates decrease with age and that persons over 65 have a much lower incidence of criminal victimization than persons below that age. This observation is true for all types of personal and household victimization incidents examined in the NCP national data; it is also generally true for 39 city-level NCP surveys, except in a few cities where persons over 65 report more personal larceny with contact (purse snatching, pickpocketing) than persons under 65.<sup>1</sup>

Notwithstanding the fact that the elderly are the least likely age group to be victimized, the current consensus is that attention must remain focused on criminal victimization of the elderly because, among other things, the physical, economic and behavioral consequences of crime are greater for them than others. It is assumed (1) that, being frailer on the average than younger people, the elderly suffer greater physical harm when they are victimized; (2) that, having fewer resources, they incur greater economic costs from crime; and (3) that, being isolated from the workforce, family contacts, and other social support mechanisms that mainstream members of society benefit from, the aged are more vulnerable to psychological stress caused by the fear of crime.

One crime-related problem which is very special for the elderly is that of fear. Using national probability samples during 1965, 1968, 1973 and 1974, the National Opinion Research Center's *General Social Surveys* revealed that the elderly are more fearful of crime than other age groups and that this fear seems to be increasing over time. In 1975, the National Council on Aging reported that 23 percent of adults, 65 or over, report fear of crime as a major social problem. Crime is more often identified by the aged as a "very serious" problem than ill health, loneliness, and lack of sufficient money.<sup>2</sup> Therefore, the question may be raised, how reality-based is this fear of crime? Statistics do not support the perception of higher victimization rates for elderly populations. However, this "fear" may well be reality-based in terms of the consequences of crime whether it is physical, economic, or both.

1. The National Crime Panel of the Law Enforcement Assistance Administration undertook several victimization surveys in the 1970's. These reports constitute the most extensive attempt to document the risk of being victimized that different groups in our society encounter.

2. Louis Harris and Associates, *The Myth and Reality of Aging in America*, National Council on Aging, 1975, p. 137.

### *Demographic Profile<sup>1</sup>*

*Growth Factors.* America's population is aging rapidly. By the year 2000, 30.6 million people will be age 65 or over. One in eight Americans will have reached that age group, making an increase of eight million, or 35 percent, over the current older adult population of 22.4 million.

Since 1900 the nation's elderly population has grown sevenfold. Population figures for this group have risen at the rate of three to four million per decade since 1940. The growth during the 1970's exceeded earlier projections as it climbed at the annual rate of 460,000.

The numerical growth in the over 65 population can be attributed primarily to three factors: (1) the high birth rate of the late 19th and early 20th centuries; (2) the high immigration rate prior to World War I; and (3) dramatic increases in life expectancy during the 20th century. The increase in life expectancy is actuarially projected at birth rather than at upper age levels. In 1900, a person could expect to live approximately 12 more years on reaching age 65. In 1974, the figure was 15.6 years.

*Future Trends.* The number of older persons is expected to continue to increase significantly during the 1980's. However, the growth rate will not be as marked as previous decades, because of the drop in the rate from 35 percent in the 1950's to 20 percent in the 1960's. From 1975 to 1990, the net increase in the over 65 population is expected to be 6.5 million, in the over 75 group, it is estimated to be 2.9 million. These numerical projections have taken the anticipated decline in mortality rates into account. But should the reduction be greater than anticipated, and medical science makes significant progress in controlling the major killers of old age, heart disease and cancer, the number of older persons would increase substantially.

The future proportion of older persons in the population is somewhat more difficult to estimate than the numerical growth, because it is dependent on future birth rates. Assuming a stable birth rate in the next 15 years, the percentage of older persons in the population will increase considerably. The U.S. Census Bureau anticipates that the 65 plus population will increase from its current estimated level of 11.0 percent of the total population to 11.7 percent by 1990; the 75 plus population will advance from 4.0 percent to 4.7 percent of the total population.

1. This section on demographic profile has been drawn largely from the statistical research presented in the *Fact Book on Aging: A Profile of America's Older Population*, prepared by the National Council on the Aging, 1978, pp. 3-30.

Most experts estimate there will be 43 million persons 65 and over by the year 2020, constituting about 15 percent of the total population. By 2030 the ratio is expected to peak at 17 percent and decline somewhat thereafter.

*Sex Distribution.* The older population is becoming increasingly female dominant. Federal census officials estimated that in 1980 there will be only 69 males for every 100 females over 65. At age 75, the ratio decreased to only 58 males for every 100 females.

The male female differential has been progressively widening for years. In 1900, males of 65 years actually outnumbered females by 102/100 but by 1960 the 65 year old female group exceeded its male counterpart by 17 percent. By 1990, the ratio is expected to decrease to 66 males for every 100 females.

The widening sex differential in the older population is attributable to the differing trends in mortality rates for males and females, particularly in relation to two major causes of death, heart disease and cancer. Reports issued by the United States Public Health Service reveal that both sexes have evidenced declining mortality rates in recent years; however, the decline for females has been dramatic while that of males has been slight.

*Racial Distribution.* Whites disproportionally outnumber blacks in the older population. Both white and black population 65 years of age and over have increased at a dramatic rate since 1900. But proportionate to their numbers in the general population, a substantially higher percent of older persons are white than are black. Whereas 11 percent of the total white population is 65 and over, only 7.4 percent of the total black population is in this age grouping.

*Living Arrangements.* Most older persons continue to live in family settings. The single most prevalent living arrangement for the over 65 population is the two-member family — husband and wife living alone.

As noted in Table I, the percentage of older females living alone is much greater than that of males (37% vs. 15%). Even in the 65-74 years bracket the differences are substantial. For the majority who continue to live in a family setting, the patterns for males and females are also quite different. Sixty percent of all males over 75 live with their spouses and 14 percent with other relatives; only 19 percent of females live with a spouse and 35 percent with other relatives.



Table 1. Living Arrangements of Men and Women 65 and Over: 1975

(By Percent)					
Male			Female		
65-74 Years					
Family	Alone	Institution- alized	Family	Alone	Institution- alized
85	12.1	2.9	64.6	32.9	2.5
Over 75 Years					
74.5	18.2	7.4	49.4	40.6	10.0

Source: U.S. Bureau of the Census, *Current Population Reports Special Studies*, Series P-23, No. 59, May 1976, p. 48.

*Geographic Distribution.* The older population is geographically distributed in roughly the same manner as the general population. High concentrations of the elderly are found in those states with the greatest population density. As indicated below, in 1970, approximately 45 percent of people 65 and over lived in the six largest populated states and Florida which ranked eight in inhabitants.

Table 2. Number and Percent of Total Population 65 and Over in Selected States (1970)

State	Number over 65 years (in millions)	Percent 65 and Over
New York	2.030	11.2
California	2.056	9.7
Pennsylvania	1.377	11.6
Florida	1.347	16.1
Illinois	1.153	10.3
Texas	1.158	9.5
Ohio	1.066	9.9

Source: U.S. Bureau of the Census, *Current Population Reports Special Studies*, Series P-23, No. 59, May 1976, p. 19.

In terms of percentage of individual state populations, a somewhat different picture emerges. Florida is an exception, with an extremely

high concentration of older persons (16.1%). However, the midwest farm-belt region and border states have concentrations of older persons well above the national average of 9.8 percent (Ark. — 12.8%; Iowa — 12.7%; Neb., Mo., and Kans. — 12.6%; S.D. — 12.5% and Okla. — 12.3%).

By far the largest segment of the older population resides in urban areas of the country. Over one-half, or 11 million of the 20 million persons 65 and over in 1970, lived in the urbanized centers of the country. Another 3.5 million lived in smaller urban areas (population classifications of 2,500 — 10,000 plus). Approximately one-fourth, or 5.4 million, lived in rural areas, chiefly on farms. Of those residing in urbanized centers, over 60 percent, or about one-third of all older persons, lived in central cities. Compared to the general population, the elderly are disproportionally represented in both the central city areas and in the smaller towns.

#### *Massachusetts Statistics*

On the basis of the 1970 state census, there were approximately 637,000 inhabitants over 65 (11.2%) out of a total state population of 5.689 million. In 1980 the elderly population over 65 years of age reached 720,000, or 12.6 percent of a total population of 5.728 million. The Office of State Health Planning has projected an elderly population of 748,000 for 1985. This increase in population is attributed to the decrease in the infant mortality rate in the post — World War I era rather than to any dramatic increase in life expectancy.

Estimates prepared by the Office of State Planning indicate that the elderly will comprise 12.7 percent (838,000) of a state population of 6.668 million in the year 2000.

## CHAPTER II. CRIMINAL VICTIMIZATION OF THE ELDERLY

### *Problems with Crime Statistics*

The general conclusion that the elderly are statistically less likely to be victims of crime needs several important qualifications. The first concerns the accuracy of victimization survey data. It is known that such surveys tend to underestimate victimization, since some respondents forget things which have happened to them; there is also a tendency for people to forget exactly when an incident happened, and to



report it as having happened more recently than in fact it did. Little is known, at the moment, about how these biases in the survey data affect estimates of victimization for different age groups — for example, whether the elderly are more or less likely to report incidents accurately to interviewers than younger people.

Second, the statistic used to measure victimization in the survey reports published by the Federal Law Enforcement Assistance Administration (LEAA), the victimization rate, is very misleading. The victimization rate equals the total number of incidents reported to interviewers by the persons in a particular group (for example, those 65 and over), divided by the number of persons in that group. But a small proportion of the population is victimized more than once, in any given six-month or one-year period. An individual who is victimized four times would thus be counted four times in the numerator of the rate, but only once in its denominator. The result is the rate is artificially inflated, and should not be used as a measure of risk.

On the one hand, the true risk for the majority of the population would be much lower; on the other hand, a small proportion of the population would have a very much higher risk than the rate would suggest. This is a general point about victimization rates and does not apply only to the elderly.<sup>1</sup>

Third, though there are some data available from National Crime Panel (NCP) surveys, there has been very little analysis of the qualitative aspects of victimization, especially with respect to the elderly; for example, an aged person jostled by a group of teenagers might interpret the situation as an assault or attempted robbery, whereas a younger person might shrug it off as an act of juvenile mischief.

Fourth and finally, it should be noted that the degree of underreporting also appears to vary over time. As the reporting procedures for crimes change, and as the composition of the classification system of crime is revised, the level of reported crime can change to a great extent. This variability in classification over time makes comparisons of crime rates almost impossible.<sup>2</sup>

The normal categorization procedures of the FBI's Uniform Crime Reports (UCR) and local police records cover the seven "most serious" crimes of murder, assault, rape, robbery, burglary, larceny and auto

1. Statement of Richard F. Sparks, School of Criminal Justice, Rutgers University, Joint Hearings of the Senate Select Committee on Aging and the House Select Committee on Aging, Part I, 95th Congress, 2nd Session, January 31, 1978, p. 57.

2. R.J. Smith, *Crime Against the Elderly*, International Federation on Aging, 1979, p. 23.

theft. Crimes to which older people may be especially vulnerable, such as abuse or neglect in an institution, consumer fraud and medical quackery, are not included. The best example of the concerns of older adults getting lost in this classification scheme is the case of purse snatching. This offense is variously classified according to the amount stolen or the amount of force used. In law enforcement records, it may be subsumed under the category of misdemeanor or felony, larceny or robbery. Thus, the police have no readily available information to draw upon with regard to purse snatchers. An index that more accurately reflects the nature of crime against the elderly would greatly enhance the knowledge of the situation.

The most serious drawback of official crime statistics is the oversimplification that results from the fact that these statistics do not allow for the analysis of qualitative aspects of crime.

Nonetheless, despite these qualifications, the findings of the NCP and other victimization surveys to date are broadly correct. The weight of the current available evidence is that the elderly are, if anything, less likely to be victims of crime than younger persons. The problem of crime against the elderly is not, in purely quantitative terms, a large problem. This is not a kind of crime which is so frequent, so widespread, that the police and other agencies of the criminal justice system cannot cope with it.

#### *Kansas City, Missouri Study*

A comprehensive three-year study, *Crimes Against the Aging: Patterns and Prevention*, was released on April 18, 1977 by the Midwest Research Institute (MRI). The study, supported by a grant from HEW's Administration on Aging and funds contributed by MRI, represents one of the most definitive investigations of elderly victimization to date.

In order to fill a major gap in the systemic knowledge of what makes an elderly person particularly vulnerable to specific types of crimes, what they fear, how crimes are committed against them, with what frequency and to what general effect, MRI conducted an 18-month investigation of all major crimes committed against elderly persons in the Kansas City, Missouri areas.

Much of this information was gathered from the victims themselves through personal interviews. As a corollary to this study of elderly victims, MRI investigators also interviewed offenders known to have committed the types of crimes under study. This approach helped to

define victim vulnerability as perceived by the offenders and to provide insights into effective crime prevention measures for the elderly.

Based on the results of these interviews and analyses of police reports and census tract data, victimization patterns were developed for (1) the victim, (2) the environments, (3) the crimes, (4) the offender and (5) the consequences of victimization.

Specific findings include the following:

Older people are often trapped in circumstances which make them exceptionally vulnerable to crime. Living on limited, fixed incomes, over half of the elderly victims in this study reside alone in deteriorating neighborhoods in juxtaposition to those persons found most likely to victimize them — young, unemployed males. Many of the victims cannot afford to take even minimal home security precautions to protect themselves.

Over half of the crimes against the elderly were burglaries, followed by robbery, purse snatch, assault, fraud, homicide, and rape according to numbers of offenses committed. The incidence and effects of strong-arm robbery (by physical force) were especially significant for the over 60 age group.

The elderly's fear of crime, reported as their most serious concern, was found justified: one in three black victims and one in four white victims had been previously victimized within two years of being interviewed for this study.

Offenders did not necessarily perceive the elderly as particularly attractive targets for victimization due to their physical or psychological status, but rather because their vulnerability was enhanced by their situations or activities (e.g., living alone or being careless with money).

With an overall median income of only \$3,000 per year, elderly victims were likely to suffer severe consequences from financial losses. Losses were computed as a percentage of one month's income to determine immediate aspects; overall, victims lost 23 percent of a month's income, but in the lower income categories, losses were over 100 percent. In many cases, these losses forced victims to cut back on or forego basic necessities.

Property losses often deprived victims of the few "luxuries" they had, such as televisions and radios, and which they

could not afford to replace. In addition, victims often lost items of great sentimental value, such as jewelry given to them by a now-deceased spouse.

Consequences of victimization could not be totally quantified. In addition to financial and material losses, physical injuries and measurable behavioral changes, there were further impacts on quality of life which could not be precisely delineated in this study. The anxiety exhibited by many victims and the fear of some to return to their homes can only suggest the actual impact of criminal victimization on the elderly.<sup>1</sup>

The crimes, and the results of them, that are described within the MRI report constitute far more than a single agglomeration of individual criminal acts. They reflect on very pervasive and vicious process of social and economic deprivation of the elderly citizenry, particularly the elderly poor. Of all the persons who, in one way or another, become targets of a criminal act, the elderly usually suffer most, and for some very basic reasons. Like many other Americans who are street crime victims, most are poor, both relatively and absolutely. However, unlike their younger counterparts, most elderly victims have little hope of recouping financial loss through later earnings. They usually have relatively little physical and emotional resiliency, thus, the physical and psychic injuries incurred through victimization can leave a more lasting mark. Many live alone, and this physical isolation is compounded by the fact that they have few persons on whom to rely for immediate aid, compassion or companionship. Some have none. Thus, although the elderly experience lower victimization rates than other age groups, the effect of such victimization — financially, physically and psychologically — can be far more devastating to the older Americans than to younger members of society. This phenomenon has been defined in terms of the "relative deprivation" experienced by many elderly.

#### *Types of Crime*

Data compiled relative to the types of crimes experienced by older people probably reflects more accurately the types of studies conducted rather than the reality of victimization. The bulk of the information

1. Midwest Research Institute, *Crimes Against the Aging: Patterns and Prevention*, Kansas City, Missouri, 1977, pp. S-1, S-2.

available is from traditional crime statistics and victimization studies which record the criminal acts in categories which may not accurately mirror the types of crimes most often suffered by older people.<sup>1</sup> In addition to the traditional classifications of homicide, assault, rape, robbery, burglary and fraud, one expert in the area, Jack Goldsmith, has suggested that such crimes as purse snatching, medical quackery, "con" games, pension frauds, retirement and land sale swindles, vandalism and abuse or neglect in nursing homes be included in order to gauge the full impact of crime on the elderly.<sup>2</sup>

An additional pathological form of behavior that is just beginning to be considered a crime category involves the "battered parent", i.e., the abuse of frail and vulnerable old persons by their adult children or other close persons, such as spouse, housekeeper or neighbor. Although relatively little is known about the origin of such behavior, some sources indicate that the motivation for such abuse might be to make an older person change his mind about a will or some aspect of financial management; or it might be the release of frustration from the stress of taking care of an infirm individual; or it may represent the release of lifelong anger towards the parent which becomes feasible because of the latter's weakness.<sup>3</sup> Such abuse reflects a wide range of misbehavior, from physical assault and life or health endangering neglect to abandonment or financial exploitation. Some commentators include psychological or emotional abuse as part of the "battered parent" syndrome. The extent of such abuse is not known. However, one authority, Marvin Ernst, believes that if battering is taken to include all forms of abuse suffered by the elderly, then parent battering is probably as common as child abuse.<sup>4</sup>

The Kansas City study provides some of the best information on the comparative frequency of the more traditional crimes against the elderly. Researchers found that burglary was the most frequent offense (55.9%), followed by robbery (24.6%), larceny (13.9%), assault (2.5%), fraud (2.3%), rape, homicide and all other crimes (under 0.52%). The high incidence of burglary and robbery were also reported in a number of other studies. Robbery rated first in Washington, D.C., Detroit and Buffalo, while burglary was number one in Omaha.<sup>5</sup>

1. Smith, *supra*, p. 9.

2. "Crime and the Elderly: An Overview." *Crime and the Elderly: Challenge and Response*, Goldsmith and Goldsmith, eds., Lexington Books, D.C. Heath and Co., Lexington, Mass., 1975, p. 2.

3. Briley, "Battered Parents," *Dynamic Years*, January-February 1979, pp. 24-26.

4. *Ibid.*, p. 25.

5. Smith, *supra*, p. 9.

Another offense often mentioned was that of purse snatch. While most purse snatch victims appear to be over 50 years of age, the frequency of this crime has not been accurately estimated. The problem is that this crime has not been systematically and closely defined as burglary and robbery have been. Purse snatch has been subsumed under thefts or larcenies, and sometimes has even been considered a misdemeanor. Also frequently mentioned were the thefts of social security, public assistance and pension checks. Again, these types of crimes that may be of particular importance to older people are not treated systematically in the usual crime statistics and victimization studies.

George Antunes has drawn a distinction between predatory and violent crimes that is useful in summarizing the situation of older people with regard to the traditional categorization of crimes. He argues that elderly victims are more likely to be preyed upon rather than treated violently, while the opposite is true for younger victims. Robbery and burglary, the principal crimes suffered by older people are predatory crimes in which the object is to obtain another's property with or without the threat of force. Crimes of which younger people are more likely to be victims, such as assault and rape, are violent, with their primary purpose to injure or harm another.<sup>1</sup>

Another type of crime perpetrated on the aged which many experts believe to be very important is that of fraud. The actual extent of fraud has been difficult for researchers to measure for several reasons. Fraud has not been uniformly defined by local law enforcement agencies and, therefore, records are probably not accurate. Also, it is believed that many victims of fraud either never suspect that they have been victimized or, probably more likely, they are reluctant to report it for fear of ridicule.

Some indication of the extent of fraud can be drawn from data collected in California. In that state, it was found that while older adults were experiencing increased incidence and fear of crimes of force, or street crimes, they were, in fact, more vulnerable to the nonviolent crime of fraud. The San Francisco and Los Angeles Police Departments have reported that more than 90% of the "bunco" (swindling by misrepresentation) victims in those cities were over 65, and

1. G. Antunes, F. L. Cook, T. D. Cook, and W. G. Skogan. "Patterns of Personal Crime Against the Elderly: Findings from a National Survey." *Gerontologist*, Vol. 17, No. 4, August, 1977, p. 324.

that the vast majority of them were women. In addition to the common swindle, investigations by the state's district attorney's consumer fraud units, local law enforcement agencies, and senior citizen committees concluded that consumer frauds involving supplementary health insurance and medical plans, mail order schemes, work-at-home offers, pyramid sales and auto and home repairs are also widespread.<sup>1</sup>

Among consumer crimes, the aged, because of their unique physical problems, are more susceptible to the blandishments of vendors of medical quackery and related health schemes. In California, medical quackery was estimated to be a \$50 million a year business. Older persons were the victims in seven of every ten cases of medical fraud coming to the attention of the state's criminal justice system. According to reports from California and hearings conducted by the United States Senate Subcommittee on Aging, the most common "get well quick schemes" included cures for cancer, arthritis, baldness, obesity and restoration of youthful vigor.<sup>2</sup>

The elderly are victims of all the types of crimes that affect other members of the community. There is enough evidence now available, however, to draw some tentative conclusions as to the special nature of the sort of crimes most common to older adults. Although it is the brutal and often sensational acts of violence that receive the most publicity and generate the most fear, these crimes are probably not the most important numerically. This quantitative conclusion should not diminish attempts to prevent such offenses. It can, however, make all concerned with the overall problem more sensitive to the less sensational, but numerically more important and often socially, psychologically, and physically damaging nonviolent crimes.

In order to cope successfully with the criminal victimization of older people, much more has to be known than merely the quantitative extent of the problem and the types of crimes most often perpetrated against them. Crime is a social process in that it consists of the interaction of individuals and groups in which some are exploited and injured by others within a particular setting. It is necessary, therefore, to go beyond the crimes themselves and explore the participants and setting. The social and physical environment in which criminal victimi-

1. Evelle J. Younger, "Prevention of Criminal Victimization of the Elderly," *The Police Chief*, Vol. 43, No. 2, February 1976, pp. 29-32.

2. *Ibid.*, p. 31.

zation occurs is of crucial importance. The elderly are an extremely heterogeneous group and only a portion of them are seriously vulnerable to crime. Environment appears to be the major explanatory factor in accounting for why some older people, more than others, are victimized by certain types of criminals for particular sorts of crime.<sup>1</sup>

#### *Environment*

Current research offers little comparative evidence on the victimization of the elderly in any environment other than major urban areas. It has been generally assumed that the crime problem in rural areas does not warrant statistical analysis.

Crime studies of urban areas have indicated the presence of a general pattern of victimization of the elderly. Some areas of the city are more conducive to criminal activity than others and particular environments seem to be associated with particular crimes. This factor holds particular relevance for the elderly population since they inevitably are concentrated in the inner city, where crime rates are generally higher.

Why do the elderly live in these high crime areas? It is obviously more than a matter of simple choice. Many are original residents of a particular neighborhood and are reluctant to leave decaying inner city areas. Others come to the inner city because of the supply of low cost housing and services. Still, some may wish to leave, but simply cannot because of lack of resources.

The typical environment of a current American inner city seems to be a decisive factor in determining the vulnerability of elderly people to many crimes. The general breakdown of the retail system servicing neighborhoods, declining property values and high transient rates produce fragmentation of inner city communities. The support systems that once existed in most inner city neighborhoods have been disrupted by increasingly mobile populations. Both novice and experienced offenders are aware of the opportunities such conditions offer them and take advantage of the situation.

The Kansas City study revealed that the elderly were chosen as crime targets not because of their age and perceived weakness, but because greed and speed of execution were more important to criminals when

1. Smith, *supra*, p. 11-12.

selecting victims. Age neither protects them nor necessarily makes them vulnerable unless they live in or are on the periphery of high crime areas.

In the case of a purse snatch, it most often occurred near the victim's home. About 80 percent of the serious crime incidents (purse snatch included) occurred in the homes of the aged victims or in the immediate vicinity. This result is partially due to the fact that burglary was the predominant crime although 60 percent of the assaults, robberies, and thefts were also committed in or near the home.

The fact that so much of the victimization of the elderly usually takes place in or near the home adds to the trauma of victimization, since the home is usually regarded as a refuge. This situation undoubtedly contributes to the great fear of victimization expressed by many older people.

#### *Economic Consequences of Victimization*

When measuring the economic consequences of criminal victimization of the aged, three related questions are generally raised: (1) What are their losses? (2) How are those losses distributed across the age groups? (3) Are the economic hardships imposed by crime losses relative to income greater among the elderly than other age groups?<sup>1</sup>

Professor Fay Lomax Cook of Loyola University of Chicago posed these three questions in a statement before congressional committees. Her research outlined in the following passages on economic and physical consequences of victimization indicates that the elderly are not a highly victimized segment of the population in purely numerical terms. However, this is not to say that the overall impact may not be greater on elderly citizens.

Monetary losses result from household crimes (burglary and larceny) or personal crimes (robbery and personal larceny with or without contact of an offender). The distinction between robbery and personal larceny with contact is that robbery involves the use of force, or threat of force, whereas personal larceny does not. Personal larcenies with contact are the oft-discussed purse snatchings and pickpocketings. Personal larceny without contact is theft without direct contact be-

1. Statement of Professor Fay Lomax Cook, School of Social Work, Loyola University of Chicago, Joint Hearings of the Senate Select Committee on Aging and the House Select Committee on Aging, "Research Into Crime Against the Elderly, Part II," 95th Congress, 2nd Session, February 1, 1978, p. 65.

tween victim and offender, and it can occur in any place other than the victim's home (e.g., an unattended bicycle, or a theft in a public restroom). The distinction between robbery and personal larceny with contact is that robbery includes unlawful entry of a residence, whereas household larceny does not.

The most recent nationwide data available relative to monetary losses experienced by victims of the above-cited criminal offenses is based on reported incidents of 1973 and 1974. In the case of household crimes for those years, persons over 65 were less likely than adults of any other age to be victimized. Relative to the personal crimes of robbery, larceny and assault, the data indicates that, in 1974, persons over 65 were less likely than adults of any other age group to be victimized by robbery, and, for 1973, they were one of the two least victimized groups. For personal larceny with contact, there seems to be no marked relationship between age and victimization, the most victimized being persons 16 to 24 and the least, persons 25 to 49. In respect to personal larceny without contact and assault, victimization decreases with age, and the elderly are less likely to be victimized than other age groups.

Moreover, the data does not indicate any dramatic shift in victimization rates among the elderly from 1973 to 1974. Rates from the first year to the second year decrease as often (in three categories) as they increase, and only household larceny rates appear to have risen substantially for the elderly in 1974, as they did for every age group.

*Household Crimes.* Economic loss from household crimes includes the amount of cash taken in burglaries and larcenies, as well as victims' estimates of the value of the goods stolen. The data<sup>1</sup> presented in Table 3 are based only on cases in which something of value was taken, thus excluding, for example, attempted burglaries. (The median rather than the mean is used in the following tables since extreme cases make the mean an inaccurate estimate.)

1. Unless otherwise noted, the tables in the following sections of this chapter were prepared by Professor Fay Lomax Cook of Loyola University of Chicago and were incorporated in her written testimony delivered before the Senate Select Committee on Aging and the House Select Committee on Aging on February 1, 1978. These tables appear on pages 66 to 70 of the committee's report. The author's source for the data presented is the National Crime Panel.



Table 3.  
Median Value of Property Loss in Household Crimes

Age of Head	Burglary				Larceny			
	1973		1974		1973		1974	
	Median	Number	Median	Number	Median	Number	Median	Number
17 to 20	\$ 27	232	\$ 50	184	\$ 25	812	\$ 24	873
21 to 26	100	584	100	554	20	2,536	22	2,732
27 to 32	80	440	98	560	20	2,236	20	2,472
33 to 39	50	452	100	440	15	2,940	15	2,969
40 to 49	75	744	74	618	13	4,584	15	4,351
50 to 64	65	712	98	668	14	3,496	18	3,316
65 plus	60	432	50	350	15	980	14	976

As shown in Table 3, the data does not suggest that the elderly are particularly prone to large losses in property crimes. Based on absolute losses, elderly victims are at or near the bottom of each dollar loss category. Across the two years, the median senior victim lost about \$55 per burglary and \$15 per simple theft.

A more significant way to measure the true impact of theft is to examine patterns of loss relative to income. Here, to utilize as a measure of economic hardship imposed by crime, the ratio of net dollar losses to victims' monthly incomes is expressed as a percentage. Net losses take into account both the value of goods stolen and property damage incurred in the course of a crime. In the case of burglary, the latter may be considerable. From this total is subtracted the value of any goods recovered by the police or others, and any insurance payments covering either the remaining property or the physical damages. The denominator of the measure, monthly income, is simply 1/12 of a victim's yearly family income.

Table 4.  
The Impact of Property Loss in Household Crimes:  
Net Loss as a Percent of Monthly Income

Age of Head	Burglary				Larceny			
	1973		1974		1973		1974	
	Median	Number	Median	Number	Median	Number	Median	Number
17 to 20	24.0%	204	24.0%	160	11.5%	736	12.0%	796
21 to 26	13.1	516	16.8	450	3.2	2,248	3.4	2,334
27 to 32	13.1	396	12.0	404	2.1	1,976	1.9	2,128
33 to 39	5.5	396	8.0	390	1.2	2,532	1.4	2,504
40 to 49	7.1	660	7.2	582	1.0	4,016	1.2	3,710
50 to 64	6.2	568	10.1	570	1.7	3,056	1.6	2,842
65 plus	10.7	380	13.7	372	3.2	836	2.4	878

As indicated in the table, burglarized households headed by persons 17 to 26 lost a larger proportion of their monthly income (20%) than did other age groups. These percentages remain fairly constant at approximately 6-8 percent in the instances of households headed by 33 to 64, then rise to 12 percent among senior citizens.

Another test of hardship involves victims who suffer a "catastrophic" property loss. A definition of "catastrophic" is necessarily somewhat arbitrary; however, the index applied in the following table is the net loss of more than a household's total monthly income. The households which suffered the highest percentage of catastrophic losses from burglary in 1973 and 1974 were those with heads in the 17-20 and 21-36 age brackets (see Table 5). Large losses continued to decline in frequency, then leveled off through the 50-64 group; among senior citizens, the percentage losing "catastrophic" amounts showed a substantial increase in 1974. The average level was higher among the elderly than for any other age group over 32, with 12 percent of the elderly burglary victims suffering catastrophically in 1973 and 1974. Again, the youngest age group had the highest percentage of "catastrophic losses" (14.6% in 1973 and 15.5% in 1974); again, the percentage decreased with age until about 65, when it began to rise.



**Table 5.**  
**Percentage of Victims of Household Crimes**  
**Who Suffered Catastrophic Property Loss**

Age of Head	Percentage of Net Losses Above 1 Month's Income			
	Burglary		Larceny	
	1973	1974	1973	1974
17 to 20	20.9%	23.3%	8.3%	7.8%
21 to 26	17.5	18.0	2.4	2.7
27 to 32	17.3	13.1	1.3	.7
33 to 39	3.4	12.7	.9	.7
40 to 49	8.7	7.3	.3	1.0
50 to 64	8.7	9.2	.9	.9
65 plus	7.3	15.8	1.9	2.7

The crimes against the elderly which garner the most notoriety are usually those which occur on the street, personal larceny with contact (purse snatchings and pickpocketings) and robbery.

Of all age groups, teenagers lost the least, a median amount of \$5.37 for teenagers 12-16, and \$22.02 for those 17-20. Among adults over 21, the elderly lost the least. Elderly victims of robbery or larceny lost \$37.49, in contrast to persons 33 to 39, who lost a median of \$69.91.

**Table 6.**  
**Financial Loss in Personal Crimes:**  
**1973 and 1974 Merged Data**

Age of Victim	Median Loss as Percent of		Percent of Losses Catastrophic	1973-74 Number
	Median Loss 1973-74	Monthly Income		
12 to 16	\$ 5.37	0.6	0.1	291
17 to 20	22.02	4.1	6.2	255
21 to 26	45.33	9.6	9.6	316
27 to 32	50.08	7.7	5.5	165
33 to 39	69.91	11.4	7.9	113
40 to 49	50.26	7.9	5.2	194
50 to 64	41.75	9.6	6.5	285
65 plus	37.49	10.1	7.9	194

As a percent of monthly income, there appears to be no marked relationship between age and loss. The highest losers, persons 33 to 39, also lost the largest percent of their monthly income (11.4%). Although the elderly are the lowest losers among adults, they have the dubious distinction of ranking second to persons 33 to 39 when the hardship imposed by that loss is considered. However, the differences among the percentages for adults are, for the most part, fairly small, ranging from 7.7 percent to 11.4 percent.

On the matter of "catastrophic" losses from personal crime, no marked relationship between age and hardship appears among adults over 20. About 8 percent of the losses experienced by elderly victims of personal crimes were "catastrophic," similar to persons 33 to 39. A slightly larger percentage of victims, 21 to 29, suffered "catastrophic" losses.

In summary, the elderly are less likely than others to be victims of crime; they lose the same or less than other adults when absolute loss measures are employed, and they lose less than young people, but the same or more than other adults, when the dollar losses from crimes are adjusted for differences in monthly income.

#### *Physical Consequences of Crime*

When measuring the physical consequences of victimization, the following five questions were raised by Professor Cooke:<sup>1</sup>

- (1) Whether a victim is or is not attacked;
- (2) Whether the attack does or does not lead to injuries;
- (3) Whether the injury is of a more or less serious type;
- (4) Whether or not the injury warrants medical attention;
- (5) Whether that medical attention is or is not protracted and costly.

As shown in the following tables, the number of persons who are injured by criminals and require hospitalization is quite small. Adults over the age of 40 are the least likely age group to be attacked. When only victims who have been injured as a result of an attack are considered, persons 40-49 are most likely to be injured, followed by the elderly, then by victims 33-39 and 50-64. Of all age groups, persons 12 to 16 are least likely to be injured.

The elderly are clearly unique in the types of injuries they receive. Columns 3-6 of Table 7 present the relevant data, and it can be seen

<sup>1</sup> *Ibid.*, p. 68.

there that the elderly are much less likely than other age groups to suffer from knife or gun wounds and from broken bones or teeth. However, they were more likely to suffer from internal injuries or become unconscious or receive bruises, cuts, scratches, and black eyes. However, the cost for the resultant medical treatment may be more burdensome to the aged citizen. The elderly group's median medical expenses of \$109 is surpassed only by that of the 33-39 year old class (\$149), but as a percentage of monthly income, the aged experience the greatest loss by far (25.7% vs. 12.6% for all other adults).

**Table 7.**  
**Patterns of Personal Attack and Injury**

Age of Victim	Base Number	Percent Attacked	Percent Injured of Those Attacked	Type of Injury — If Injured, Percent Who Had — <sup>1</sup>			
				Percent Knife or Gun Wounds	Broken Bones or Teeth	Internal Injuries; Unconscious	Bruise, Cut, Black Eye, Scratches
12 to 16	2,098	55.8	48.2	4.4	4.3	3.9	93.0
17 to 20	1,835	47.7	56.6	7.3	6.9	6.0	90.4
21 to 26	2,054	44.6	56.9	10.2	8.2	7.0	88.6
27 to 32	1,154	38.3	59.5	8.2	9.5	6.2	88.8
33 to 39	719	39.7	61.4	6.4	12.0	9.9	86.8
40 to 49	880	34.3	68.9	7.3	9.9	16.1	90.4
50 to 64	880	33.6	61.3	8.2	17.4	11.4	85.9
65 plus	469	32.9	66.2	1.8	6.7	19.5	94.5
<b>Total</b>	<b>10,089</b>	<b>44.0</b>	<b>56.5</b>	<b>7.1</b>	<b>8.2</b>	<b>7.8</b>	<b>90.0</b>

1. Does not sum to 100 percent as victims could receive multiple injuries.

**Table 8.**  
**Financial Costs of Injury**

<b>Age of Victim</b>	<b>Base Number</b>	<b>Percent Injured Who Needed Medical Care</b>	<b>Those Who Needed Care Who Received Some at Some Expense</b>		<b>Median Medical Expense (Dollars)</b>	<b>Median Medical Expense as Percent of Monthly Income</b>
			<b>Number</b>	<b>Percent</b>		
12 to 16	565	28.8	101	63.4	34.80	4.4
17 to 20	496	33.9	84	53.1	50.32	10.4
21 to 26	521	42.4	118	58.7	62.95	12.0
27 to 32	263	39.9	53	54.1	79.97	10.6
33 to 39	175	41.7	29	44.2	149.73	17.8
40 to 49	208	56.2	61	53.6	64.94	12.0
50 to 64	181	54.1	41	45.6	50.42	10.7
65 plus	102	47.0	26	56.7	109.56	25.7

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An important question is what percentage of these medical expenses actually came out of the pockets of elderly victims and what proportion was paid by Medicare and other insurance programs. Since Medicare paid a little less than half the medical costs of the average elderly person in 1974, it is reasonable to assume that Medicare paid only a portion of these costs incurred through victimization.

In summary, the evidence suggests that the elderly (1) are attacked less often than others; (2) are among the more likely to be injured when they are attacked; (3) are more prone to experiencing internal injuries and cuts and bruises; and (4) generally incur larger medical expenses.

#### *Behavioral Consequences*

An examination of existing evidence regarding the fear of crime in America seems to indicate clearly that the elderly bear the heaviest psychological costs of crime. Despite the indications of current evidence the behavioral consequences or impact of victimization remain difficult to assess. Why do the elderly seem so fearful of crime, when several studies have concluded that in fact the elderly are one of the least victimized segments of our population? Perhaps a simple answer can be given to this question: The aged fear crime because they have fewer resources for coping with victimization and its consequences.

Fear of crime in the older population has been the most pervasive and consistent finding of major research studies. A Harris Poll revealed that, on a nationwide level, the highest concern among older Americans was the problem of crime — 23 percent of the respondents rated fear of crime as the most serious problem. Crime was rated higher than the problem of poor health, which followed with 21 percent. In 1971, the Los Angeles Times conducted a poll which showed fear of crime was second only to economics in causing stress.<sup>1</sup> Two national surveys sponsored by the National Retired Teachers Association and the American Association of Retired Persons discovered that the fear of crime ranked only behind the problem of food and shelter.<sup>2</sup>

A study of the urban aged in Wilmington, Delaware, determined that 65 percent of the population were alarmed over their personal

1. *In Search of Security: A National Perspective on Elderly Crime Victimization*. Report by the House Select Committee on Aging, 95th Congress, First Session, April 1977, p. 38.

2. Smith, *supra*, p. 21.

safety.<sup>1</sup> An extensive survey by the Chicago Planning Council on Aging reported that fear of crime represented the most significant problem, with 41 percent of the city's 518,000 residents over 60 selecting it as the major issue.<sup>2</sup> Similar findings emerged from another Chicago study, using a much smaller number of respondents (516), as indicated in the following table.

Table 9.  
Problems: Comparison of Chicago Survey Groups  
With National Sample  
(In Percent)

Problem	65 years and over	
	Total of Chicago Survey (groups N=516)	National
Fear of crime . . . . .	41	23
Poor health . . . . .	37	21
Not having enough money to live on	22	15
Loneliness . . . . .	10	12
Not enough medical care . . . . .	10	10
Not enough education . . . . .	4	8
Not feeling needed . . . . .	4	7
Not enough to do to keep busy . . .	4	6
Not enough friends . . . . .	4	5
Not enough job opportunities . . .	3	5
Poor housing . . . . .	7	4
Not enough clothing . . . . .	3	3
Not seeing children or grandchildren or other relatives enough . . . . .	8	—
Not being able to get places — good transportation not available	9	—

Source: B. Havighurst, "Senior Citizens in Great Cities: The Case of Chicago," *Gerontologist*, Vol. 16, No. 1, Pt. 2, 1976, pp. 47-52.

1. *Ibid.*  
2. "The Elderly, Prisoners of Fear," *Time*, November 29, 1976, p. 22.

*Variables That Affect Fear*

It should be noted that some segments of the elderly population, especially low income people living in metropolitan centers, who express greater fear, do in fact have a higher probability of being victimized. The four primary variables which have the most influence on this score are sex, economics, race and community size.

*Sex.* Women generally have greater apprehension towards crime than men regardless of age. This pattern holds true for the elderly. Data from the 1973 and 1979 General Social Surveys, conducted by the National Opinion Research Center (NORC) at the University of Chicago, indicated that while 34 percent of aged males reported fear of crime, the figure rose to 69 percent in the case of aged females.<sup>1</sup>

*Economics.* People at lower income levels express more fear of crime than those in higher economic strata. A 1975 Louis Harris poll reported that 31 percent of people with incomes under \$3,000 per year felt that fear of crime was a major social problem as compared to 17 percent of those with incomes of \$15,000 per year or more.

An article written by Frank Clemente and Michael B. Kleiman also shows a relationship between fear of crime and income. Of the elderly population with incomes of \$7,000 per year or less, 51 percent indicated fear of crime while 43 percent of older Americans with annual income above \$7,000 expressed significant fears.<sup>2</sup>

This relationship between economics and fear may be justified in light of the fact that poorer people generally live in the inner cities and experience higher victimization rates than their wealthier suburban peers.

*Race.* Virtually all studies indicate greater alarm relative to crime among the elderly black population than among their white counterparts. The 1975 Louis Harris survey showed that of those people over 65, 21 percent of the white population as compared to 41 percent of the black population identified crime as a "serious problem for them personally."<sup>3</sup> A further refinement of these statistics shows a correlation between race and income. Of those 65 and older with incomes under \$3,000 a year, 28 percent of the whites and 44 percent of the

1. F. Clemente and M. B. Kleiman, "Fear of Crime Among the Aged", *Gerontologist*, June 1976, p. 208.  
2. *Ibid.*  
3. Harris, *supra*, p. 133.



blacks listed fear of crime as a very serious social problem. These rates declined to 18 percent for the white population and 33 percent for the black population when incomes were over \$3,000.<sup>1</sup>

The Clemente and Kleiman study indicated that while approximately 47 percent of the elderly white population was afraid to walk alone in their neighborhoods at night, this figure increased to 69 percent in the elderly black population.<sup>2</sup>

*Community.* Community size is directly related to a person's fear of crime.<sup>3</sup> The greater the size of the community, the higher the level of fear, according to the Harris polls of 1964, 1966, 1969 and 1970 and the Gallup polls of 1967, 1968 and 1972. This fact holds true for all age levels in the population but is most acute among the elderly.

The Clemente and Kleiman study shows that fear in the elderly "decreases in a clear step pattern as one moves from large cities to rural areas."<sup>4</sup> The study produced the following data showing the percent of elderly (over 65) who expressed fear in localities of various sizes:

<u>Community</u>	<u>Elderly</u>	<u>Nonelderly</u>
Larger cities (250,000+)	76%	57%
Medium cities (50,000-250,000)	68	47
Suburbs of larger cities	48	39
Small towns (2,500-50,000)	43	40
Rural locations (under 2,500)	24	25

#### *Impact of Fear of Crime*

Fear of crime in the elderly population has been well substantiated. Even if this phenomenon is out of proportion to the statistical probability of being victimized, or without foundation due to local environment, the effects are just as debilitating as if the fears were justified.

Generally, older people cope with their fear of victimization by limiting their behavior. The elderly in urban areas are afraid to leave their homes, particularly at night. They limit their exposure to crime by avoiding places they consider dangerous, even if it is the bus stop. Housing choices by the elderly have also been found to be significantly

1. *Ibid.*, p. 135.

2. Clemente and Kleiman, *supra*, p. 208.

3. S.I., Boggs. "Formal and Informal Crime Control: An Exploratory Study of Urban, Suburban, and Rural Orientations." *Sociological Quarterly*, Summer 1971, pp. 320-326.

4. Clemente and Kleiman, *supra*, p. 209.

affected by fear of crime. Such fear also impacts the general social behavior and morale of the aged and prevents satisfaction in most other areas of their lives. Many tend to withdraw from the fearful environment of their community and remain behind locked doors, staying home from church or abandoning shopping trips. This virtual "house arrest" for many elderly is accompanied by many mental and physical problems and possibly even a higher depression rate due to such isolation.

As a result of their fears, the elderly will often reduce any behavior or activity which provides a street criminal with the opportunity to victimize them. However, this reduction is at the expense of a richness of life style, such as freedom to visit friends and relative, to sit in the park, or to take walks in the neighborhood. For those older adults who are poor or sick, the life sustaining resources of shopping and medical care may be sharply curtailed by their fear of crime. Since these losses can block satisfaction of important social, physical and psychological needs, the final cost to the elderly of criminal victimization is beyond measurement.

#### *Policy Implications*

One policy regarding crime victims may be suggested, based on current research. On the one hand, it may be argued that the crime problem of the elderly is not an age-related problem but rather a condition-related problem. The condition is one of poverty. The basis for this argument is the observation that the consequences of crime against the elderly are most serious when one examines not absolute monetary loss, but losses in terms of their incomes.<sup>1</sup>

When compared to all other age groups in the population, aged citizens have the highest incidence of poverty. Whereas one in nine persons under age 65 lived in poverty in 1974, one in every six persons aged 65 or older lived in poverty. In fact, the situation may be worse than the figures indicate, for the estimate of 3.3 million elderly poor exclude many living in public facilities and more than one million others whose own incomes would classify them as poor but who lived in nonpoor households.<sup>2</sup>

1. Joint Hearings of the Senate Select Committee on Aging and the House Select Committee on Aging, *Research Into Crimes Against the Elderly Part II*, 95th Congress, 2nd Session, February 1, 1978, p. 78.

2. *Ibid.*, p. 79.

One policy approach that has been suggested is a compensation program specifically targeted at the elderly who live on subsistence level incomes. Compensation survey data indicates a sharp drop-off in insurance coverage of property losses among the elderly, paralleling their income level. As indicated in Table 10, both young household heads and the elderly were substantially "underinsured" for burglary losses. This contributed to their relatively high net financial losses to property crime.

Table 10.  
Percentage of Victims Insured  
for Burglary Losses

Age of Head	All Losses (Percent Insured)		Losses over \$100			
			1973		1974	
	1973	1974	Percent Insured	Number	Percent Insured	Number
17 to 20	18.2	20.7	24.2	272	36.0	64
21 to 26	16.2	16.8	31.7	396	28.0	224
27 to 32	17.9	29.9	31.4	294	41.3	202
33 to 39	28.9	39.5	48.4	244	49.5	210
40 to 49	35.3	37.8	43.3	456	51.2	292
50 to 64	41.0	38.9	50.0	412	52.3	308
65 plus	25.4	22.8	40.0	124	33.5	162

#### *Boston Elders Attitudes Towards Crime<sup>1</sup>*

Boston elders' perception of neighborhood crime and their perception of the most important crimes affecting their population was included in a report prepared by the Center for Survey Research in 1978. Out of a total elderly population of 86,330 (65 years of age or older) in Boston, 3,300 of whom live in elderly public housing, 1,000 respondents answered the questionnaire distributed by the Center for Survey Research. The percentage of elderly persons questioned was proportionate to the number of people in each area according to the 1970 Federal Census.

<sup>1</sup> The statistical information in this section was obtained from the following report: Lawrence G. Branch, *Boston Elders: A Survey of Needs 1978*, Center for Survey Research, a facility of the University of Massachusetts/Boston and the Joint Center for Urban Studies of M.I.T. and Harvard University, and the Boston Observatory of the University of Massachusetts/Boston. This report was prepared for the City of Boston Commission on Affairs of the Elderly.

*Neighborhood Satisfaction and Crime.* When asked how satisfied they were in general with their neighborhood, three out of five elders (60 percent) reported that they were "very" satisfied, and another 23 percent were "somewhat" satisfied. A total of 13 percent reported that they were either "somewhat" or "very" dissatisfied with their neighborhood.

Forty-two percent of Boston elders reported some kind of neighborhood compatability dimension as the primary source of neighborhood satisfaction, including 14 percent who reported that neighbors help each other and 9 percent who reported that the thing they liked best was that neighbors mind their own business. Another 34 percent of Boston elders reported that neighborhood accessibility was their primary source of satisfaction in their neighborhood including 9 percent who reported that their house was near transportation, 5 percent who reported that their house was near stores, and 19 percent who reported that their house was near other facilities, such as places of worship and community centers. An additional 13 percent of Boston elders reported that their primary source of neighborhood satisfaction was that it was quiet and safe.

When asked how safe their neighborhoods were, 69 percent of Boston's elderly reported "very" or "reasonably" safe, compared to 31 percent who reported either "somewhat" or "very" unsafe. The aged living alone, those elders living in Allston-Brighton or the downtown area, and the frail elders were more likely to report that their neighborhoods were very unsafe. Elders from West Roxbury, Roslindale or South Dorchester - East Boston were more likely to report that their neighborhoods were "very" safe.

When questioned as to the crime level in their neighborhoods, three out of five Boston elders surveyed (61%) answered that the crime level had remained the same over the past year, while 22 percent reported that it had gone up compared to 17 percent who indicated that the crime level had ebbed. Elders who were more likely to report that the crime level had gone up over the past year included those aged 75 or more; those with low income in general, residents in Allston-Brighton, and the frail elders. Residents from Back Bay - Beacon Hill, Chinatown - North End - South End and Fenway were more likely to report that crime had gone down in their neighborhood over the past year.

On the matter of restricted activities due to fear of crime, nearly two out of three elders (64 percent) reported that they "hardly ever" limited their activities due to their fear of crime. Elderly persons who were more likely to report "frequently" limiting their activities due to their fear of crime included the residents from Allston-Brighton and those living in households composed of nonfamily members.

When asked what were the three most important crimes affecting Boston elders, approximately 22 percent responded that there were no particular crimes affecting Boston elders. Of the remaining 78 percent, burglary and purse snatching were each mentioned most often (27 percent and 26 percent respectively). Muggings and robberies accounted for nine percent of the crimes. Elders from South Boston - Charlestown were particularly concerned with burglary, while residents of Upper Roxbury - Mattapan and South Dorchester - East Boston as well as those living with unrelated others were most distressed about purse snatching.

#### *Criminal Victimization Survey in Boston*

The crime statistics and findings presented in this section are derived from a victimization survey conducted early in 1974 under the National Crime Survey Program. Since the early 1970's, victimization surveys have been designed and carried out by the Law Enforcement Assistance Administration (LEAA) and by the Bureau of the Census for the purpose of developing information that permits detailed assessment of the character and extent of selected types of victimization.

The victimization surveys conducted in Boston and 12 other central cities in 1974 enabled measurement of the extent to which city residents age 12 and over were victimized by selected crimes, whether completed or attempted.<sup>1</sup> The individual offenses covered were rape, robbery, assault and personal larceny; burglary, household larceny and motor vehicle theft constituted the yardstick for "household" crimes. In addition to gauging the extent to which the relevant crimes happened, the survey permitted the examination of the characteristics of victims and the circumstances surrounding criminal acts, exploring, as appropriate, such matters as the relationship between victims and offender, characteristics of offenders, extent of victim injury, economic con-

1. U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, *Criminal Victimization Surveys in Boston: A National Crime Survey Report*, July 1977.

sequences to the victims, time and place of occurrence, use of weapons, whether the police were notified, and, if not, reasons advanced for not informing them.

The surveys in Boston were carried out in the first quarter of 1974 and covered criminal acts that took place during the 12 months prior to the month of interview. Information was obtained from interviews with the occupants of 9,290 housing units (19,186 residents age 12 and over). This data only covers the geographic area of Boston, which in 1975 contained 12.9 percent of the state's elderly population (65 years of age and older).

The data presented in the report are only "estimates" based on a smaller limited sample. It is not based on actual incidents recorded but is a statistical rendering because, often in the over 65 category, enough sample cases could not be documented in order to provide an accurate estimate of the elderly's victimization rates in various crime categories.

The crime trends for the aged in Boston were generally consistent with victimization surveys conducted elsewhere in the United States. The conclusion that the aged are one of the least victimized segments of the population has been affirmed by these statistics. For example, the elderly 65 years of age or older were the victims in only six percent of the total estimated number of personal crimes as opposed to 26 percent for the 20-24 age group, and 23 percent for the 25-34 group.

When crimes of violence are examined, the aged were victims in only five percent of the total estimated incidents in this category. The age groups of 20-24 and 25-34 were estimated to be victims in 26 and 21 percent of the incidents. In the category of crimes of theft, once again the 65 years plus group represented only seven percent of the estimated victimizations as opposed to 26 percent for the 20-24 age group and 24 percent for the 25-34 groups.

The data presented in the following tables indicate that those 65 and over are generally the least victimized segments of the population in the categories of robbery, assault and theft, with a few exceptions; males in the 65 and over category were victims of robberies more often than some of the younger categories. Also, males 65 and over suffered the highest rate of injuries during a robbery. This higher injury rate for men does not hold true for the female population. This difference can be attributed to the tendency for men to confront an assailant and give

a struggle which often leads to injury as opposed to the more passive reaction of women who do not often struggle with a street criminal.

The general observation that the elderly do not experience greater impact from crime is reinforced when burglary, household larceny, and motor vehicle theft are analyzed.

**Table 11.**  
**Household Crimes:**  
**Victimization Rates, by Type of Crime**  
**and Age of Head of Household**  
**(Rate per 1,000 households)**

Type of Crime	12-19 (6,500)	20-34 (74,400)	35-49 (41,000)	50-64 (45,600)	65 and over (40,800)
Burglary	174	208	145	119	74
Forcible entry	59	88	61	53	30
Unlawful entry without force	86	64	37	26	20
Attempted forcible entry	29 <sup>1</sup>	57	47	40	23
Household larceny	116	113	119	64	29
Less than \$50	65	54	60	35	20
\$50 or more	32	46	50	21	4 <sup>1</sup>
Amount not available	3 <sup>1</sup>	5	4 <sup>1</sup>	2 <sup>1</sup>	1 <sup>1</sup>
Attempted larceny	16 <sup>1</sup>	9	5	7	4 <sup>1</sup>
Motor vehicle theft	63	111	103	78	35
Completed theft	43	65	61	48	26
Attempted theft	20 <sup>1</sup>	46	42	31	9

Note: Detail may not add to total shown because of rounding. Numbers in parentheses refer to households in the group.

1. Estimate, based on about 10 or fewer sample cases, is statistically unreliable.

Source: Law Enforcement Assistance Administration.

**Table 12.**  
**Personal Crimes: Victimization Rates for Persons Age 12 and Over,**  
**by Sex and Age of Victims and Type of Crime**  
**(Rate per 1,000 resident population in each group)**

Sex and Age	All personal crimes of violence	Crimes of Violence				Crimes of Theft	
		Robbery		Assault		Personal	Personal
		Robbery with injury	Robbery with- out injury	Aggravated assault	Simple assault	larceny with contact	larceny with- out contact
Male							
12-15 (19,100)	115	11	54	25	23	31	61
16-19 (19,600)	147	15	46	51	34	16	109
20-24 (33,600)	143	14	44	46	39	14	150
25-34 (35,900)	101	8	25	31	37	8	139
35-49 (33,400)	55	10	21	13	11	9	84
50-64 (32,100)	54	14	24	6 <sup>1</sup>	10	12	59
65 and over (22,000)	47	19	20	4 <sup>1</sup>	4 <sup>1</sup>	25	42
Female							
12-15 (18,500)	61	6 <sup>1</sup>	13	9 <sup>1</sup>	33	5 <sup>1</sup>	49
16-19 (24,100)	71	3 <sup>1</sup>	24	22	17	44	123
20-24 (41,300)	71	7	17	14	23	47	154
25-34 (42,600)	62	4 <sup>1</sup>	19	16	18	39	130
35-49 (38,900)	36	6	14	7	8	38	86
50-64 (42,500)	30	9	9	5	7	38	48
65 and over (37,000)	13	5 <sup>1</sup>	4 <sup>1</sup>	2 <sup>1</sup>	1 <sup>1</sup>	36	24

Note: Detail may not add to total shown because of rounding. Numbers in parentheses refer to population in the group.

<sup>1</sup>1. Estimate, based on about 10 or fewer sample cases, is statistically unreliable.

Source: Law Enforcement Assistance Administration.

### *Media Bias Against the Elderly*

After a thorough review of the statistics concerning elderly victimization, the question may be asked, why is the popular perception of the elderly so heavily negative? Why do so many continue to believe that the elderly are living in constant danger of victimization? Why do so many elderly live in constant fear of crime when the statistics do not indicate that a serious crime problem exists for them?

One explanation for these misperceptions can be attributed to the negative image of the aged fostered by the media, especially television. There is probably no other identifiable segment of the population, aside from criminals, that is so consistently portrayed in a negative fashion. Most TV news stories depict the elderly as (1) victims of crime; (2) victims of circumstance; and (3) recipients of social services. When a story is not negative it is allotted into a category labeled "human interest", i.e., "Margaret Hennessy was honored on her 100th birthday by her friends and neighbors." The most striking aspect of these stories is that one constantly is viewing a group of people having things done to them or for them. They are people who are in effect portrayed as having lost control of their lives. The TV camera seems to overemphasize the physical deterioration of old age and an unspoken value judgment of the hopelessness and uselessness of old age is conveyed. Only infrequently is an elderly person portrayed as a vibrant and contributing member of society.

There are some signs that the media are aware of this negative stereotyping and are actually trying to correct it. The popular actress, Helen Hayes, appeared in a film about the trauma of being sent to a nursing home. "Over Easy" is a weekly TV program aimed at an elderly audience and has a very high rating. Many newspapers have added a regular column dealing with issues of special interest to the elderly, such as the column "Senior Set" in the Boston Globe. Under pressure from the Gray Panthers Media Watch Project, there have been improvements in television advertising and situation comedies.

The area of least improvement according to Lydia Bragger, who heads the Media Watch Project, is television news. She contends that representatives of local and network television are much more receptive to complaints about entertainment appearing on TV than to those involving news programs.

### *Victim Profile*

**Economic Factors.** In 1973 almost half of the population 65 and over were retired, and were living on a fixed income at or below the poverty level. The poverty threshold for a couple was set at \$4,505 and at \$1,974 for an individual. In older families, 12 percent were below the poverty level; in the instance of the older person living alone or with nonrelatives, 37 percent were below the poverty level. The Bureau of Labor Statistics indicated that in 1973 it cost a retired couple a minimum of \$5,414 a year to maintain an "intermediate" standard of living in an American city. Half the aged couples could not afford this "modest but adequate" standard of living.<sup>1</sup>

Elderly crime victims are poor both relatively and absolutely. The theft of \$20.00 from an elderly person on a fixed income represents a much greater relative loss than when the same amount is stolen from an employed person. Many older people have no bank accounts from which they can withdraw funds in an emergency, e.g., if robbed. They must wait until their social security, pension or supplemental security income checks arrive the following month.

This protracted loss also occurs when an older person's property is stolen or damaged. The elderly generally do not have the financial capability to replace or repair the property. The dollar loss or theft of a television set may not appear significant in terms of FBI crime statistics but the consequences of the loss for the elderly person may be dramatic. The losses experienced by the elderly victim can have implications that are far more dramatic than a simple economic evaluation would reveal.<sup>2</sup>

**Physical Factors.** There are some normal conditions in the aging process which cause the older person to be more vulnerable in criminal abuse. Diminished physical strength and stamina are experienced by all older people. With advanced age there is also a greater possibility of incurring physical ailments such as visual or hearing losses, arthritis and circulatory illnesses. Another condition of advanced age is osteoporosis which causes bones to be more brittle, more easily broken, and less quick to heal.<sup>3</sup>

Criminals, particularly teenagers, are aware of the diminished strength and physical weaknesses in the aging population and often

1. *In Search of Security: A National Perspective on Elderly Crime Victimization*, Report by the House Select Committee on Aging, 95th Congress, First Session, April 1977, p. 24.

2. *Ibid.*, p. 24-25.

3. *Ibid.*, p. 25.



seek this more vulnerable group as targets. If the older person is physically harmed as the result of crime, it is difficult to assess the full extent of the injury.

*Environmental Factors.* One of the key factors in the elderly's vulnerability to crime stems from their location in urban areas and particularly, their residence in neighborhoods with high crime rates. More than 60 percent of the elderly live in metropolitan areas and most of these reside in the central city. Many have been living in an area for decades and either for cultural, emotional or economic reasons have not moved. Many older people live in the central city because they cannot afford housing in the surrounding areas or suburbs. They are often people who are dependent on public transportation. For whatever reason the urban elderly often find themselves in close proximity to the people most likely to victimize them — the unemployed and teenage dropouts. The dates that the elderly receive social security, SSI and pension checks are well known in these areas. Criminals know the most likely days that the elderly will have large sums of cash on their person and in their homes. Older people are also more likely to be victimized repeatedly by the same offender.<sup>1</sup> Because older persons are often unable to move from the area, they do not report the offender for fear of reprisals.

*Social Factors.* There are some social conditions, more prevalent among the aging population, which increase their chances of victimization. Statistically, elderly people are more likely to live alone. The criminal is more apt to select a home for a burglary that is inhabited by only one elderly person. Older persons are frequently alone on the streets and on public transportation. This again makes them easy targets.

There is indication that older people are particularly susceptible to fraud, bunko, and confidence games. This may be related to the social isolation experienced by many older Americans.<sup>2</sup>

#### *Offender Profile*

Studies indicate that the typical person who commits street crimes against the elderly as well as most other age groups is a young unemployed black male living in the inner city who preys on older blacks and

1. Jack Goldsmith, "Community Crime Prevention and the Elderly: A Segmental Approach," *Crime Prevention Review*, California State Attorney General's Office, July 1975, p. 19.

2. In Search of Security, *supra*, p. 26.

whites alike, particularly women, and whose principle motivation is greed and opportunity.<sup>1</sup>

The most common characteristic of those who commit crimes is their youth. The youthfulness of most offenders is, in turn, related to the social environment and the type of crime. In 1967, the President's Crime Commission reported that crimes of violence against elderly persons were committed predominantly and increasingly by young adults 18 to 24 and that about one-half of all reported street crimes (robbery, burglary, larceny and auto theft) were committed by persons under 18.<sup>2</sup> In the City of Detroit, it is estimated that some 66 percent of offenders involved in street crimes against the elderly were between the ages of 13 and 18, with 32 percent in the 19 to 25 age group and only 2 percent older than 25.<sup>3</sup> In Philadelphia, two-thirds of the offenders were reported as adolescents, one-fourth as adults, and one-tenth as children.<sup>4</sup> In Kansas City the vast majority, nearly 90 percent, were younger than 30; most offenders were estimated by their victims to be teenagers (59.7 percent). An additional 29.5 percent were said to be in their twenties.<sup>5</sup>

As noted, research reveals that the typical offender in the United States can be characterized as a young unemployed black male. For instance, in Detroit, it was found that about 98 percent of the suspects arrested for street crimes were males, and approximately 82 percent were blacks.<sup>6</sup> This data, however, should not be construed to indicate that young blacks are predominantly criminal. The variable of environment must be taken into consideration, for both the poor, elderly and unemployed black youths are concentrated in the inner city. When race of victim and race of offender were paired, it was found that the majority of crime was intraracial. The findings in the Kansas City study support the contention that crime is more frequently a case of young blacks victimizing older blacks and young whites victimizing older whites.<sup>7</sup>

1. Midwest Research Institute, *Crimes Against the Aging: Patterns and Prevention*, Kansas City, Missouri, 1977, VI-2, VI-3, VI-6.

2. *Ibid.*, p. 1-3.

3. W.W. Bradley, "Cass Corridor Safety for Seniors Project", *The Police Chief*, Vol. 43, No. 2, February 1976, p. 43.

4. P.M. Lawton, L. Nahenow, S. Yaffe and S. Feldman, "Psychological Aspects of Crime and Fear of Crime", as presented in Chapter 3 of *Crime and the Elderly: Challenge and Response*, J. Goldsmith and S. Goldsmith, eds., Lexington Books, D.C. Heath & Co., Lexington, Mass., 1975, p. 25.

5. G.L. Cunningham, "Pattern and Effect of Crime Against the Aging: The Kansas City Study", as presented in *Crime and the Elderly*, *supra*, p. 41.

6. Bradley, *supra*, p. 43.

7. Midwest Research Institute, *supra*, V-14.

### *Statutory Trends in Other States*

Violent crime has gained a great deal of attention from lawmakers in various states. It is one of the few areas where states have enacted age specific legislation aimed directly at the elderly. In June of 1980, the Massachusetts Legislative Service Bureau conducted a survey aimed at determining which states have increased penalties for assaults against the elderly. The results of this survey showed that eight states have recently amended statutes, increasing penalties. A brief capsulization of these amendments is provided in the following paragraphs.

*Colorado.* In 1979, the Colorado General Assembly enacted legislation which mandated greater penalties for the crime of robbery of the elderly by providing that conviction of such an offense shall carry the penalty of a Class 3 felony, a sentence of four to eight years.<sup>1</sup> Normally, the crime of robbery would be a Class 4 felony carrying only a two to four year sentence.

*Hawaii.* In 1978, Hawaii revised its penal code to include an extended term of imprisonment for certain offenses attempted or committed against the elderly (murder, rape, robbery, felonious assault, burglary, kidnapping and inflicting serious bodily injury). The amendment increased the maximum term of imprisonment: from 20 years to life for a Class A felony; from 10 to 20 years for a Class B felony; and from 5 to 10 years for a Class C felony.<sup>2</sup> Imposition of the extended term is within the discretion of the court. The length of actual imprisonment is determined by the Hawaii parole authority, and the offender may be paroled before the maximum term expires.

*Illinois.* The Illinois Legislature in 1979 increased the penalty for battery committed against the elderly, providing that any person who causes bodily harm to an individual of 60 years or older shall be guilty of aggravated battery.<sup>3</sup> Whereas a simple battery is only a Class A misdemeanor and carries a sentence of not more than one year, aggravated battery is a Class 3 felony and conviction thereof requires a sentence of not less than two and not more than five years.

*Louisiana.* In 1977, the Louisiana Legislature enacted legislation providing that any person convicted of 1) manslaughter, 2) simple rape, 3) forcible rape, 4) aggravated assault, 5) aggravated battery, 6) simple battery, 7) aggravated kidnapping, 8) simple kidnapping or 9) false imprisonment against a victim 65 years of age or older would be

1. Colo. Rev. Stats., s. 18-4-304.

2. Ha. Rev. Stats., ss. 706-661 and 706-662(3).

3. Ill. Rev. Stats., c. 38, ss 12-1 to 12-4.

subject to, in addition to any other additional penalty imposed, five years imprisonment without the benefit of parole, probation or suspension of sentence.<sup>1</sup> However, on March 3, 1980, the Louisiana Supreme Court declared the statute unconstitutional on the grounds that the punishment was excessive under the provisions of Article I, Section 20 of the Louisiana Constitution.<sup>2</sup>

*Nevada.* A 1979 enactment by the Legislature stipulated that any person who commits the crime of 1) assault, 2) battery, 3) kidnapping, 4) robbery, 5) sexual assault, or 6) taking money or property from any person 65 or older is subject to imprisonment for a term equal to and in addition to the terms of imprisonment prescribed by statute for the crime.<sup>3</sup> The sentence prescribed by this section must run consecutively with the sentences prescribed by statute for the crime. This section does not create a separate offense but provides an additional penalty for the primary offense.

*Rhode Island.* In 1980, the Rhode Island Legislature enacted two bills relative to crimes against the elderly. House, No. 7545 provided an additional prison term of up to five years for any person convicted of committing the following crimes against the resident of an elderly housing project or while on the premises of said project: 1) assault and battery, 2) statutory burning of personal property, 3) larceny of property or money of a value not exceeding \$500, and 4) other crimes excluding motor vehicle offenses, which result in personal injury or death. However, this act shall not apply in instances where a maximum sentence of greater than five years is provided elsewhere in the general laws. The second enactment, House, No. 7639, stipulated that assault and battery upon a person 60 years or older shall be deemed a felony and punishable by imprisonment for not more than five years and/or a fine up to \$1,000.

*Tennessee.* In 1977, the Tennessee Legislature passed an amendment to the Tennessee Code to provide that when assault with intent to rob is committed against a person 65 years of age or older or a person with a permanent mental or physical impairment, the jury may fix the length of imprisonment, upon conviction, at double the usual maximum term.<sup>4</sup> Thus, a person convicted of assault to commit robbery upon a person 65 or older is subject to a term of imprisonment of up to 30

1. La. Rev. Stats., c. 14:50.1.

2. *State of Louisiana v. Robert H. Goode, Jr.*, Supreme Court of Louisiana, No. 65879, March 3, 1980.

3. Nev. Rev. Stats., c. 193, S. 1.

4. Tenn. Code, s. 39-607.

years. If the assault is committed by means of a deadly weapon, the maximum sentence rises to 42 years.

*Wisconsin.* In 1980, the Wisconsin Legislature approved special penalties for battery on the elderly by specifying a new class of battery. Specifically, the terms of the new statute provide that whoever intentionally causes bodily harm to another which creates a higher probability of great bodily harm to a person of 62 years of age or older is guilty of a Class E felony.<sup>2</sup> Persons convicted under this statute are subject to a fine not to exceed \$10,000 and/or imprisonment not to exceed two years. This statute does not provide greater penalties for battery since the existing statute regarding aggravated battery carried penalties of a fine not to exceed \$10,000 and/or imprisonment not to exceed 10 years. Rather, its intent was to provide an alternative to prosecution for simple battery (fine not to exceed \$10,000 and/or imprisonment not to exceed 9 months) in cases where an instance of battery against an elderly person could not be successfully prosecuted as an aggravated battery.

### CHAPTER III. FRAUDULENT SCHEMES DIRECTED AT THE ELDERLY

#### *Vulnerability of Elderly Consumers*

Many older people have common concerns that make them particularly easy prey for swindlers. Worries about finances and their health, and problems involved in keeping up their homes provide fertile grounds for unscrupulous individuals to offer a wide variety of money-making or money-saving schemes, cheap and continuing health cures, and home improvement plans which sound very tempting.

In many cases, it is the convenience of the offer, as well as the price, which the older victims find most attractive. For persons who cannot check out either similar or alternate plans because of limited access to transportation or physical disabilities, the claims of companies who advertise through the mail frequently go unchallenged. If people could make money in their own homes, or receive relief from various ailments without having to go to the doctor, it would be a tremendous asset for many elderly people living on meager incomes. Unfortunately,

1. Wis. Rev. Stats., s. 940.19(1) and (2).

legitimate plans of this kind are practically nonexistent.<sup>1</sup> Such phoney money-making schemes and quack medical cures are among those referred to by the President's Crime Commission as being "particularly pernicious, attacking, as they do, people who can least afford financial losses of any kind."<sup>2</sup>

At hearings conducted by committees of the U.S. Senate dating from 1962 on fraud and exploitation of the elderly, several psychologists testified as to the reasons for the susceptibility of older people to these inducements.<sup>3</sup> In brief these reasons include:

1. There is a close relationship between lack of income and susceptibility to fraud and deception. Due to low income, older persons tend to grasp at any opportunity guised in terms of helping supplement meager incomes.
2. The average educational level of the population 65 and older is less than eight years of public schooling. The elderly are often ill informed.
3. The desire for security and stability is an extremely important human motivation which is exploited in sales spiels.
4. Older persons may tend to fee helpless which leads to suggestibility and gullibility. Psychologists have found that low self-esteem is correlated with high suggestibility. In other words, when persons lack confidence in their own ability to make decisions, they are more likely to accept the decisions and persuasion of others.
5. Lonely people are susceptible to the blandishments of salesmen because they receive attention and a sort of pseudo-friendship which allays suspicion and doubt.
6. Another problem with living alone exists — the "feedback" problem. Consumer decisions, particularly major decisions, are discussed between husband and wife and perhaps with children; the experience of friends and neighbors is sought. Even relative strang-

1. Midwest Research Institute, *Crime Prevention Handbook for Senior Citizens*, prepared for the Administration on Aging, Department of Health Education and Welfare, 1977, p. 45.

2. The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, U.S. Government Printing Office, Washington, D.C. 1967, p. 10.

3. Hearings before the Senate Committee on Aging, "Frauds and Quackery Affecting Older Citizens," Part I, January 15, 1963; Part II, January 16, 1963. Hearings before the Senate Committee on Aging, "Frauds and Deceptions Affecting the Elderly," January 31, 1965. Hearings before the Subcommittee on Consumer Interests of the Elderly of the Senate Committee on Aging, Part II, February 3, 1967.

ers are asked about their experiences with an intended purchase. To the degree that older persons are isolated from communication opportunities of this type, particularly from those trusted information sources, they lose the advantages of this "feedback" process.

7. The desire for health and the avoidance of pain and suffering on the one hand and to accomplish this at as little cost as possible on the other hand also contribute to this susceptibility. For example, it is estimated that 57% of arthritic patients continued to use various kinds of fake nostrums and home remedies, indicating the susceptibility to quackery when faced with continuing pain.

*Consumer Agency Surveys.* In 1973, the National Retired Teachers Association and the American Association of Retired Persons (NRTA/AARP) surveyed the Attorneys General of the states and consumer protection agencies throughout the country to determine the kind and scope of consumer complaints they received from older persons. Of the 88 sources queried, none of the 55 respondents categorized consumer complaints by age and at best they could give only vague observations concerning the most serious kinds of complaints affecting older consumers. The following activities accounted for a large majority of the complaints from the aged:

1. Home repair and improvement schemes.
2. Deceptive sales practices.
3. Hearing aid sales practices.
4. Land sale schemes.
5. Automobile (purchase and repair).
6. Credit problems (including incorrect billing and credit cards).
7. Pyramid schemes and franchises.
8. Mail order.
9. Health foods and medical quackery.
10. Insurance.

The NRTA/AARP Consumer Office also surveyed 92 state and local commissions on aging to determine what consumer programs were being offered or planned for older persons and what specifically was included in such programs. Twenty-six of the 42 agencies responding identified a specific program, most often nutritional programs. Many of the commissions on aging reported that they had not initiated any type of consumer program; however they indicated activity in the following areas would produce more significant results in addressing the consumer protection needs of the elderly:

1. Designating a local agency or person for assistance.
2. Publishing a free directory of state and local consumer services.
3. Assigning consumer experts to address meetings.
4. Preparing program suggestions and a bibliography of materials.
5. Distributing consumer education pamphlets and materials.

To assemble further data relative to the matter of consumer protection for the aged, the Consumer Office canvassed the 287 NRTA/AARP members who attended area conferences at San Francisco and Atlanta in August and September of 1973. Their survey addressed not only the kinds of personal consumer problems experienced by those attending the workshops but also the effects of, and their reaction to, inflation. The survey was structured along lines similar to one conducted by *Changing Times* magazine in April 1971. The *Changing Times* survey elicited some 25,000 responses from among its readers. Although the NRTA/AARP survey was in no way a representative sampling of all older Americans, it did reveal some clues regarding the major consumer problems and concerns of older persons. A comparison of the findings of the respective surveys is presented in the following table.

Table 13.  
Spending Areas Reduced in Response to Inflation

Spending Area	Rank Order		Percentage Price rise, 1971
	<i>Changing Times</i>	NRTA/AARP	
Recreation	1	3	10%
Food away from home	2	1	14
Purchased appliances & furniture	3	2	3
Clothing	4	12	9
Purchase of auto	5	6	11
Food at home	6	4	8
Operation of auto	7	7	14
Homeownership	8	10	21
Medical care	9	9	14
Public transportation	10	8	22
Education	11	13	9
Fuel & Utilities	12	5	9
Rent	13	11	9

The NRTA/AARP survey supported the observation that inflation forces older consumers to cut back on an already limited style of life, and that they cut back first in areas of discretionary spending rather than in areas of greatest price rise. Problems with the cost of food, medical care and housing predominated for the retired persons in this survey.

Major consumer problems of the attendees surveyed at the area conferences were, in order of importance, the costs of: (1) food, (2) doctor/dental care, (3) fuel and utilities and (4) drugs and medicine.

The survey further indicated that in trying to cope with inflation 74 percent of the NRTA/AARP respondents returned to work compared with 45 percent of *Changing Times* respondents. It also indicated that older consumers do not know where to obtain reliable consumer information and referral services in their communities.

The most frequent action taken by the respondents when confronted with a consumer problem was to contact (a) the dealer or manufacturer (55%), (b) the Better Business Bureau (9%), (c) an attorney (6%), and (d) the federal agency or consumer office (4%). About 25 percent indicated that they did nothing to relieve their discontent.

As a result of these actions, complaints were satisfactorily resolved 37 percent of the time, not resolved in 35 percent of the instances and 27 percent were still pending.

NRTA/AARP maintains a National Consumer Assistance Center in Washington and formerly operated local Consumer Assistance Centers in various parts of the country. In 1974, some 4,119 contacts were received by these centers of which 2,678 were complaints. As shown in Table 14, mail order transactions provoked the most complaints from the elderly, followed by problems with housing, automobiles and parts and appliances. The main reasons for these complaints were failure to provide, followed by repair and service difficulties, quality defects and delays in delivery.

**Table 14.**  
**Consumer Complaints Received From Older Persons by**  
**NRTA/AARP Consumer Assistance Program**

<b>A. Type of Complaint</b>	
Mail order (34%)	Clothing (1%)
Housing (owner & rental) (12%)	Moving (1%)
Automobiles & parts (9%)	Credit & loans (1%)
Appliances (7%)	Hearing Aids (1%)
Medical & dental (3%)	Heating & air conditioning (1%)
Insurance (3%)	Land sales (1%)
Furniture (3%)	Investments/stocks (1%)
Public utilities (2%)	Legal services (1%)
Food (1%)	Drugs (1%)
<b>B. Reason for Complaint</b>	
Failure to provide (23%)	Warranty (2%)
Repair & service difficulties (16%)	Inadequate information (2%)
Quality defects (9%)	Advertising-labeling (1%)
Delay in furnishing (9%)	Safety (1%)
Overcharges (4%)	Product substitution (1%)
Cost (3%)	Inadequate coverage (1%)
Billing & collection practices (3%)	Over-indebtedness (.4%)
Sales procedures (2%)	Other (20%)

*Source:* 1974 Report of the NRTA/AARP Consumer Assistance Program, Washington, D.C.

This action by the NRTA/AARP represents the first effort to identify and analyze consumer complaints lodged by aged citizens. There is still, however, a great lack of reliable data on the consumer problems of the elderly. Such research is essential if consumer and other educational, legislative and programmatic needs of older persons are to be accurately identified.

#### *Extent and Impact of Consumer Fraud*

Stereotypes that label the elderly as gullible and particularly vulnerable to fraud or consumer abuse were challenged by the findings of a



two-year research project conducted by a division of the Battelle Human Affairs Research Center of Seattle.<sup>1</sup>

Among its many conclusions, the resultant report noted that when the complaints of older persons were compared with a matched group of randomly selected complaints from younger consumers, the two sets of complaints were similar. In general, the marketplace abuses afflicting older persons were no different from those affecting the general population. Complaints filed with consumer protection agencies did not indicate a sinister picture of shady "con artists" who make a specialty of defrauding older people. Most older consumers reporting to the public agencies studied appeared to be self-reliant and well-informed and were less likely to be duped than they were to be dissatisfied with purchase transactions and repair situations.

While the aged should not be regarded as helpless prey for those who would exploit them, the research noted that the elderly differ from their younger counterparts in the intensity of the overall impact of such abuse on their lives and also in a greater reluctance to seek redress when an abuse occurs.

Monetary losses, inconveniences and hardships suffered by older persons in the marketplace seem to more seriously affect their outlook, sense of security, and well being. Their reluctance to report abuses may well be caused by the fear that they may be considered to have diminished competence because of their age.

#### *The California Experience*

While California senior citizens are experiencing increased incidence and fear of crimes of force, they are even more vulnerable to certain nonviolent crimes. "Bunco" and "confidence games" are almost exclusively directed toward the senior citizen. The San Francisco and Los Angeles police departments report that more than 90 percent of the "bunco" victims are over 65 years of age and are mainly women. In California, the predominant "bunco" schemes victimizing elderly citizens are the "Bank Examiner" scheme, the "Pigeon Drop" scheme, and welfare, social security and pension check frauds. In one six month period, the Los Angeles Police Department reported that almost twice

1. Herbert Edelhertz, *Consumerism and Aging*, Battelle Law and Justice Study Center, Seattle, Washington, 1979.

as much money was lost by seniors through the "Bank Examiner" and "Pigeon Drop" con games as was lost by banks through robberies.<sup>1</sup>

The vulnerability of seniors to "bunco" and "con games" results from their isolation, their economic distress, and the fact that their life savings are usually readily accessible in bank or savings and loan accounts. Law enforcement efforts to curtail "bunco" activity include teaching the elderly to recognize the methods of operation (MOs) of current "bunco" schemes and emphasis on strict adherence to a few simple rules:

1. Never discuss personal finances with strangers.
2. Don't expect to get something for nothing.
3. Never draw cash out of a bank or a savings account at the suggestion of a stranger.
4. Always check on anyone who claims to be an FBI agent, bank official, official inspector or representative of any public agency.
5. Call police and report any "bunco" MO approaches.

The California Attorney General's Office have also trained personnel of banking and savings institutions on "bunco" MOs and victimization patterns, and have enlisted their cooperation in public education programs at various bank branches.

In California, medical quackery is estimated to be about a \$50 million a year business. Common "get well quick" schemes include cures for cancer, arthritis, baldness, obesity, restoration of youthful vigor, and an infinite variety of other remedies for various maladies.<sup>2</sup> Economic loss is often substantial and delay in receiving proper medical treatment as the result of dealing with the quack may lead to even more serious problems.

The primary target of the medical quack is the senior citizen. Vulnerability arises out of the obvious fact that as the aging process unfolds, a concomitant deterioration of physical condition and increase of health problems occur. Further, the more serious the health problem, and the less susceptible to cure or amelioration by legitimate medical services, the more desperate the sufferer becomes and the more likely he or she is to resort to "miracle" cures.

1. Evelle J. Younger, "The California Experience: Prevention of Criminal Victimization of the Elderly," *Police Chief*, V. 43, No. 2, February 1976, pp. 28-32.

2. *Ibid.*



Seniors were the victims in approximately seven out of ten cases of medical quackery fraud coming to the attention of the California consumer protection agencies and judicial authorities.<sup>1</sup>

#### *Confidence Games*

The term "confidence game" is an apt description of the way in which swindlers operate — gaining both the confidence of the victims and their money before the victims realize they have been tricked. As part of the game, the swindler takes a calculated risk that the victim will not report the crime, at least in time for him or her to be caught — a gamble which usually pays off because most victims are very reluctant to admit that they have been swindled, and they either fail to report the incident at all or postpone it until the chance of apprehending the culprit is minimal.

Not only financial loss, but the mental stress suffered by an individual who has been taken in by a "con artist" can be much more devastating for an older victim than for a younger one. Unlike younger persons who could eventually replace any monetary losses through future earnings, the older victim has little hope of regaining financial resources once they have been lost. In addition, the lasting effects of anxiety and remorse are likely to be much more severe for the older victim when he or she realizes the extent of the loss.

There is an infinite variety of confidence games which have proved to be successful, and no two "games" are played in exactly the same way. However, several of the most successful schemes — those which have claimed the most victims — have features in common and are described in the following section.

*Home Improvement Contractors.* Senior citizens are particularly susceptible to the unscrupulous door-to-door contractor who tend to canvass a neighborhood attempting to gather deposits and initial payments on unnecessary home repairs. Frequently, an associate will beforehand scatter the consumer's front lawn with what appears to be bricks from the chimney, or he may even climb to the roof of the consumer's house and dislodge some chimney bricks, throwing them in front of the house. The contractor then rings the consumer's door bell and points out the "hazardous" condition of the chimney, roof, siding, etc. The senior citizen, having no means of easy access to the allegedly affected area of the house and disturbed by the possibility of greater

1. *Ibid.*

damage if the defect is not corrected, will frequently sign a contract for immediate repairs. Invariably, the agreement will be couched in terms which insulate the contractor against liability for non-performance. Moreover, he will attempt to extract as large a deposit as possible. In some cases, some minor work, or the appearance of work tools on the front lawn, will begin. A further payment for continued work may then be extracted. Before the senior citizen has a chance to realize what has happened, the "fly-by-night" contractor is gone — to repeat the same procedure in another neighborhood.

*Labor Charges for Work or Services.* The senior citizen may find himself/herself a particular target of attempts to inflate charges for labor or service, either in terms of the amount of work done, or the amount of time spent doing work. This type of ballooning may take place in a variety of situations, including warranty work of various kinds in which only the cost of parts is covered, e.g., home repair, T.V. or appliance service, automotive work or household moving. It is frequently assumed that the senior citizen will not be sufficiently alert to take note of the discrepancy between the actual time and labor invested and the notation of same on any billing statements.

#### *Mail Fraud*

Every year 750 million sales are made by mail in the United States. The ease and convenience of shopping by mail particularly appeals to the less mobile members of society — the elderly, the infirm and the handicapped. The mail order field is one of the leading sources of consumer complaint in the nation. It is a natural haven for a "fly-by-night" promoter whose sole asset is the possession of a post office box. In 1975, known losses to the general public from mail fraud exceeded \$395 million, up from \$194 million in 1974.<sup>1</sup>

The consumer's problems with mail order firms are exacerbated by the fact that a seller who is far away can simply ignore complaints, secure in the knowledge that the consumer may never find him or her.

The most common complaints against mail order sellers are (1) failure to deliver merchandise ordered and paid for; (2) late delivery of items ordered, often rendering them useless to the buyer; and (3) refusal to resolve or acknowledge customer problems with delivered merchandise. A less common tactic is to mail unsolicited goods to the consumer who is then billed and harassed to pay for the merchandise.

1. W. Lissner, "23% of U.S. Mail Frauds Originate in Local Area." *New York Times*, February 25, 1976.

This practice has been curtailed by federal and state<sup>1</sup> laws that deem any unsolicited merchandise a gift, to be disposed of by the consumer as he pleases, with no obligation whatsoever.

The Federal Trade Commission has promulgated a Trade Regulation rule<sup>2</sup> governing all sales by mail throughout the country. The rule requires mail order sellers to fulfill orders within 30 days or refund the consumer's money. The seller must give the customer a postcard which he can use to cancel the order if it is not delivered within 30 days.

Fraudulent tactics by mail order vendors are prohibited by the federal mail fraud statute.<sup>3</sup> The statute generally prohibits the use of the mail in "any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises..." Violation of the statute is a criminal offense, punishable by a \$1,000 fine or five years imprisonment, or both. Problems of proof, however, make mail order cases difficult to prosecute. Moreover, while most states have enacted statutes making deceptive advertising<sup>4</sup> and sales practices unlawful, relief thereunder is difficult to obtain as most transactions involving mail fraud are committed in the course of "interstate commerce", an area primarily within federal jurisdiction.

Fraudulent schemes are often skillfully disguised as genuine business transactions — a ploy that depends for success upon the victims' tendency to accept at face value claims of quality, to neglect to read the fine print, or to consider all the factors involved in a transaction. Such approaches may operate technically within the law, in which case the burden of responsibility is on the buyer to decide if the product — whether it be real estate, a business franchise or a hearing aid — is overpriced or appropriate for his or her own individual needs.

In addition to the above-cited deceptive practices, the following is a partial list of schemes, most of which are mail frauds, which government officials say cheat older Americans out of millions of dollars annually:

1. Phony insurance claims, some related to health insurance.
2. "Debt consolidation" offers.
3. Magazine subscription contracts.

1. 39 U.S.C.A. s. 3009 (1975), G.L. c. 93, s. 43.

2. 40 Fed. Reg. 49592, 53383, 53557 (1975).

3. 18 U.S.C.A. s. 1341 (1975).

4. G.L. c. 93A, s. 1 et. seq: c. 266, ss. 91-92.

4. Land sales, homesites, retirement estates, condominium schemes.
5. Worthless stocks, bonds, oil and gas leases.
6. Business franchise or distributorship promotions.
7. Work-at-home plans.
8. Book publishing schemes.
9. Home improvement schemes.
10. Medical remedies (including hearing aids), fake laboratory tests, miracle cures.
11. Chain referral schemes — buying a product and earning money by showing it to new customers.
12. Membership in "discount clubs" — where savings would be too good to be true.

The U.S. Postal Service maintains a special unit to investigate fraudulent schemes that make use of the mails. Administrative sanctions such as the suspension or termination of mail delivery may be imposed. However, more flagrant perpetrators are turned over to the Justice Department for prosecution under the mail fraud statute.<sup>1</sup> The postal inspector has no legal authority to compel a refund, although on occasion he may be able to secure one for a complainant.

Before contacting the FTC, the Post Office Department or state and local consumer protection agencies, the consumer may profitably seek assistance from two private sources. One is the particular magazine, newspaper or other medium which carried the mail order firm's advertisement. Reputable magazines intervene on behalf of their readers to resolve complaints against advertisers.

Another source of aid is the Direct Mail Marketing Association, a trade association of companies doing business through the mails, which directs complaints to the appropriate person at the responsible mail order houses.

#### *Land Sales*

Fraud and abuse in the sale of land have been widespread.<sup>2</sup> Many of the victims are older Americans who hoped to move to a warm climate where they can enjoy a pleasant retirement, free of the worries and

1. 19 U.S.C.A., s. 4005 (1975).

2. In 1972, the U.S. Department of Housing and Urban Development held nationwide hearings on land sales fraud which produced testimony of widespread abuses. See *New York Times*, Sept. 20, 1972, p. 32; Sept. 21, 1972, p. 37.

anxieties of their working lives. Thousands of people buy land, sight unseen, at free dinners given by land dealers. Sales prospects, who come on the assurance that there is no obligation to buy, are pressured by salespeople offering phony "special discounts," free gifts and other inducements to sign the contract immediately using tactics designed to discourage careful consideration of the purchase. Some developers offer free weekend accommodations to lure potential purchasers to the site in question but they may charge the prospect if a sale is not consummated.

To curtail such tactics, a number of states have enacted information disclosure laws for land sales. Sellers are required to file detailed written property reports, which are available to any prospective buyer wishing to examine the report.<sup>1</sup> In New York, the report must contain a statement not only on the land itself (terrain, sewage, water supply, proposed improvements, etc.), but also data on the assets and liabilities of the subdividers.<sup>2</sup>

A similar property report must also be filed with the Office of Interstate Land Sales of the U.S. Department of Housing and Urban Development. The filing of these reports, however, does not constitute approval by the government of the seller or the offering. Unfortunately, consumers are told by some owners that the government has conducted an exhaustive investigation of their operations and that they have met the necessary requirements to engage in such business.

Some states go beyond mere information disclosure and give the consumer who signs a contract to buy land a "cooling off" period in which he may cancel the sale with no obligation. In Michigan, this period is five days; in New York, ten days.

#### *Hearing Aids*

Hearing loss affects more Americans than any other chronic condition, with persons over 65 most often affected.

Too often, consumers do not visit a doctor or trained audiologist, but go instead to a hearing aid dealer. Dealers frequently offer free hearing tests to attract potential customers hoping to save on physician's fees. Investigations have revealed that many dealers advise the

1. See, e.g., Mich. Stat. Ann. s. 26, 1286 (1973).

2. N.Y. Real Property Law, s. 337-6 (McKinney 1968).

consumer that he/she needs a hearing aid when such is not the case,<sup>1</sup> that without an aid the person's hearing will worsen,<sup>2</sup> and that the aid will restore to the purchaser perfect normal hearing.<sup>3</sup> Tests often are improperly conducted in nonsoundproof environments. Salesmen attempt to sell the most expensive models, whether the expense is justified or not.

Consumers are mistakenly instructed to replace their aids at frequent intervals and salesmen have been accused by some public interest organizations of selling duplicate and unnecessary appliances.<sup>4</sup>

In Massachusetts the sale of hearing aids is regulated by statutory law. Chapter 93, section 71 et seq. provides that a person must first obtain medical clearance and a hearing test evaluation from a physician, audiologist, or otolaryngologist before entering into a contract for the sale of a hearing aid.

#### *Funeral Services*

Perhaps in no other major purchase is a person in so vulnerable a position as he/she is when purchasing funeral services. The bereaved is not only emotionally distressed, but also is under extreme time pressure to complete the necessary arrangements. Without time to consider calmly and carefully other possible arrangements, the spouse or next of kin must rely heavily on the professional judgment of the funeral home director. Sadly, governmental investigations have unearthed evidence that funeral directors have exploited this advantage to increase their profits.<sup>5</sup> Substitutions in quality of materials or workmanship, or failure to install contracted for monuments, frequently take place when an elderly person is responsible for the necessary arrangements. In some extreme examples, the unscrupulous mortician will arrange "time payments" on pre-burial arrangements. He will conveniently forget to give the other party an itemization of payments and the latter

1. A survey of hearing aid dealers in Baltimore, Maryland disclosed that in nine out of twenty-one visits (42 percent of all visits) dealers recommended hearing aids when trained audiologists of the John Hopkins Hospital did not recommend them. See Public Citizen's Retired Professional Action Group, *Paying Through the Ear*, 1-5, 1973.

2. New York Public Interest Research Group, *Stop, Look & Listen Before You Buy a Hearing Aid: Buyer's Guide to Hearing Aids*, 1974.

3. *Ibid.*

4. *Paying Through the Ear*, *supra*, 111-3.

5. Federal Trade Commission, *Funeral Industry Practices — Statement of Reason for Proposed Rule*, 40 Fed. Reg. 39904 (1975).

may continue to make periodic payments in fixed amounts well in excess of any mutually agreed price or actual cost for such services.

Another problem confronting the family or survivors is the unavailability of basic price information on funeral services. State laws, state regulatory boards and industry trade associations all combine to prohibit the advertising of funeral prices in numerous states.<sup>1</sup> Furthermore, funeral directors regularly refuse to give price information to potential customers over the phone.<sup>2</sup> In one New York study, almost two-thirds of the funeral homes contacted declined to divulge prices on the telephone.<sup>3</sup>

Chapter 112, section 84B of the Massachusetts General Laws provides that all consumers be given, prior to any service rendered by the mortician, an itemized statement showing, to the extent known, the price of merchandise and service that the customer has selected. Also, state regulations require that prices must be placed in a conspicuous manner on every casket offered for sale. However, there is no regulation or statutory provision that requires funeral homes to relay price information over the phone.

#### *Medicinal Use by the Elderly*

Approximately 25 percent of all prescription medicines sold annually in the United States are purchased by persons who are 65 years of age and older.<sup>4</sup> Given the fact that the elderly account for approximately 10 percent of the nation's total population, such volume indicates heavy drug usage among elderly Americans.<sup>5</sup> Eighty-five percent of individuals 65 years and older suffer from one or more chronic disorders which often require one or more types of special medication.<sup>6</sup>

Moreover, the elderly are the biggest users of pharmaceutical and over-the-counter drugs and this factor makes them particularly susceptible to promotional efforts by drug manufacturers and related industries, such as national and local retail pharmacy chains. The

1. *Ibid.*, 39905.

2. B. Kronman, *A Death in the Family: Guide to the Cost of Dying in New York City*, Nassau & Suffolk, New York Public Interest Research Group, New York, N.Y., 1974.

3. *Ibid.*

4. M. Silverman and P.R. Lee, *Pills, Profits and Politics*, University of California Press, Berkeley, Calif., 1974, p. 19.

5. A.S. Ostfeld and D.C. Gibson, *Epidemiology of Aging*, U.S. Department of Health, Education and Welfare, National Institute of Health No. 75-711.

6. R.C. Atchley, *The Social Forces in Later Life*, Wadsworth Publishing Co., Belmont, Calif., 1977, pp. 106-109.

pharmaceutical industry spends about twenty cents of every dollar of sales on promotion and only about six cents of every dollar for research and development.<sup>1</sup> These factors along with the elderly's relative unsophisticated view of the marketplace may account for the heavy drug consumption rate among the aged.

There are many problems relating specifically to the process of aging that impact on the use of medication. Some of these effects may be minor, but some can involve life and death consequences. Two relatively new areas of pharmacy study, biopharmaceutics and pharmacokinetics, determine how well medications are absorbed by the body. It has been found that chemical properties of certain medications are altered in older persons.<sup>2</sup>

Metabolic changes experienced by the elderly slow down or alter the absorption, circulation and excretion of drugs. Therefore, the toxicity level is often lower among elderly patients than their younger counterparts. Adding to this problem is the multiple drug use by elderly patients who have other chronic or serious maladies.<sup>3</sup>

The more drugs that become available the more complex and serious becomes the problem of unwanted interactions between medications. Most drug interactions are predictable and preventable with proper evaluation by a patient's doctor or pharmacist. Nevertheless, adverse drug reactions are very common among the elderly. Patients 60 to 70 years old have almost twice the likelihood of experiencing an adverse drug reaction as adults of 30 to 40 years.<sup>4</sup>

The dependence on both prescription and over-the-counter medicines has prompted legislatures to respond with proposals designed to protect the health of the populace at large.

The State of Washington was the first state to require pharmacists to consult with every patient receiving a new prescription.<sup>5</sup> The states of Delaware and Kansas have recently passed similar legislation, and

1. R.L. Kayne, "The Elderly and the Drug Culture," in *Aging Prospects and Issues*, 2nd ed., R. H. Davis, ed., University of Southern California Press, Los Angeles, Calif., 1976.

2. R. Weg, "Drug Interaction with the Changing Physiology of the Aged: Practice and Potential," in *Drugs and the Elderly*, R. H. Davis, ed., Ethel Percy Andrus Gerontology Center, Los Angeles, Calif., 1973, pp. 71-91.

3. J.W. Smith, L.G. Seidl, and L.E. Cluff, "Studies on the Epidemiology of Adverse Drug Reactions," *Annals of Internal Medicine* 65, October 1966, 629-640.

4. K.L. Melman, "Preventable Drug Reactions — Causes and Cases," *New England Journal of Medicine* 284, June 1971, 1361-1368.

5. Title 69.41.130.

other states are considering following suit. Under previous practice, a clerk usually gave the prescription to the patient. Under new regulations, a pharmacist must communicate with the patient.

Some states require pharmacies to post prescription prices so that patients know in advance how much they will be charged for prescriptions. This may represent a potential cost savings which is an important consideration for those on fixed incomes. The elderly consumer should be aware that included in that prescription price is the cost of medication plus the professional services provided, which may vary considerably between pharmacies.

In recent years, many states have passed "generic drug" laws to ameliorate the economic impact of the costs of medication. Under such statutes, a pharmacist is authorized by the attending physician to substitute a "generic equivalent" in lieu of the brand drug. Generic drugs invariably are less costly than brand name medications.

In Massachusetts, the generic drug statute gives the prescribing practitioner the right to authorize an equivalent interchangeable substitution, if applicable, of any drug he/she prescribes, as long as it is so noted on the dispensing instructions of the pharmacist.<sup>1</sup> In cases where interchange is permitted, the pharmacist must dispense a less expensive reasonably available interchangeable drug product as listed in the most current drug formulary.

### *Housing*

Another important issue for the elderly is housing. In 1973, 23 percent of an aged individual's budget supported housing costs. The elderly seek housing which is affordable, secure, free of physical obstacles, and which permits maximum independence. For many senior citizens this has meant home ownership. However, while home ownership affords rent-free living and a degree of independence, the concurrent burdens of rising insurance rates, utility bills, taxes and home deterioration coupled with a reluctance to leave a changing, albeit familiar, neighborhood present special problems for the elderly citizen. The median equity of homes owned by the elderly in 1973 was \$18,531 compared with an equity of \$24,100 for the total adult population. Notwithstanding benefits in the form of real estate tax abatements mandated by statute, elderly homeowners pay 8.1 percent of their

1. G.L. c. 112, s. 12D.

income on property taxes, more than twice the proportion of those under 65.<sup>1</sup>

Despite these factors, the elderly appear satisfied with their current housing. The National Council on Aging/Harris survey of 1975 disclosed that only 4 percent of the elderly were dissatisfied with their housing. The apparent satisfaction with current housing has been explained by suggesting that the elderly attribute housing problems to other factors, such as income, and do not focus on actual housing dissatisfaction. Satisfaction may also be attributable to the realization that there are few affordable or problem-free alternatives. Nevertheless, some elderly seek other forms of living accommodations such as life care facilities. The desire for alternatives to ownership may be prompted by such concerns as a desire to eliminate maintenance responsibilities, have medical care readily available or enjoy the good life with extensive recreation facilities.

In all housing situations, the elements of reduced income, limited mobility, susceptibility to pressure sales techniques and physical impairments which interfere with purchase or rental negotiations place the elderly consumer in a disadvantageous position.

*Apartments.* While elderly tenants may be subjected to the same abusive practices as other tenants at the hands of unethical landlords, the difficulty which the aged have in relocating exposes them to continued exploitation. Studies indicate that they change residences at half the rate of the total population. Landlords who lure elderly tenants with promises of low rent can raise the rent after the tenant has settled in, since they are unlikely to move or complain. One New York City landlord reportedly sent recruiters directly to senior centers with offers of low rent. Similarly, rent increases which are allegedly pegged to improvements or other benefits are easily perpetrated on elderly tenants who cannot readily cope with moving. Apartment tenants may also find themselves no longer eligible for long-term leases upon turning 65, even if they are long-time residents who, prior to age 65, have had such leases.<sup>2</sup>

*Condominiums.* One form of housing which is popular with the financially secure elderly is the condominium, which offers an investment opportunity, facilities ranging from recreation rooms to swim-

1. Thomas C. Nelson, *Consumer Problems of the Elderly*, Federal Trade Commission, August 1978, pp. 53-54.

2. *Ibid.*



ming pools, and minimal upkeep responsibilities. However, elderly condominium owners will be beset by the same problems which confront condominium owners of all ages when facilities which are promised are not provided, management costs escalate, or recreation usage fees are not justified by the facilities which are actually built.

Conversions of rental apartments to condominiums present unique problems for the elderly. Because of limited resources they may be unable to assume the financial obligations associated with ownership. Heavy demand for the converted quarters will result in early evictions. Many states are considering safeguards such as the right of first refusal to purchase to protect the rights of elderly tenants.<sup>1</sup>

*Boarding Homes.* Another type of housing arrangement which has created interest among the elderly is the small propriety boarding home. These facilities, which are generally not subject to state or federal regulation but may be licensed by local governments, provide housing, meals and often minimal personal care for approximately 10 individuals per home. The proprietors of these facilities frequently have themselves designated as the "representative payer" for the resident, thereby receiving and controlling the resident's resources. While obtaining "representative payer" status is easy to accomplish, requiring only support from one physician, undoing the arrangement may require more resources than the disadvantaged resident can muster, especially since he/she is without funds.<sup>2</sup>

#### *Insurance*

The elderly are particularly vulnerable to unfair insurance promotions. They share with the general population a high level of ignorance as to what constitutes adequate coverage or what are appropriate insurance options. Adequate coverage is vital to the aged in order to take care of health needs and to provide for burial expenses. Automobile insurance may be important particularly to the disabled elderly, who may rely on this means of movement as the primary means of transportation. Finally, the elderly may wish to leave some form of estate to their survivors and thus may be susceptible to various life insurance promotions relative to estate planning. The elderly person

1. *Ibid.*, p. 57-58.

2. *Ibid.*, p. 60.

may be quicker to place their trust in a salesperson and are less likely to perceive unfair sales practice.<sup>1</sup>

*Life Insurance.* There is a high level of consumer ignorance regarding various types of life insurance coverage. The most common shortcoming in this area involves the payment of premiums over an extended period of time which far exceeds the face value of the policy and benefits thereunder.

Promotion of life insurance among the elderly may emphasize the desire to provide for one's survivors. Salespersons may play upon the elderly person's parental feelings while ignoring the fact that the individual's children are full grown, employed and financially secure. Life insurance needs of the elderly, particularly the widowed, may be minimal or nonexistent. The widowed person does not have a spouse to provide for. For a couple, except when the death of the spouse results in loss of pension benefits, the death of one's spouse may not result in income loss.<sup>2</sup>

*Automobile Insurance.* Individuals over 65 may be unable to obtain, or renew, motor vehicle insurance policies because of discriminatory cancellation practices or high rates. This may be one reason why 40 percent of the over-65 households do not own an automobile. Carriers may refuse to renew policies when age 65 is reached purportedly because of an accident which occurred 20 years before and which had not previously affected coverage. Moreover, the elderly may be substantially disadvantaged in the case of companies who refuse to insure older vehicles (above 20 years old). Such discrimination, like high rates, is not based on driving records or actuarial data, but unfair discriminatory policies.

*Cancer Insurance.* In 1980, a comprehensive study<sup>3</sup> by the House Select Committee on Aging concluded that state and federal officials need to improve regulations governing the sale of cancer insurance to prevent elderly persons from being swindled.

The study stated that cancer insurance is the fastest growing insurance line; some four million policies were sold in 1979. About 20 million policies are in force overall. Many of the 300 companies that sell the insurance rack up these impressive sales records by using scare tactics on elderly persons and high pressure advertisements. Some ads

1. *Ibid.*, p. 61.

2. *Ibid.*, p. 63-64.

3. Report of the House Select Committee on Aging, "Cancer Insurance: Exploiting Fear For Profit," 96th Congress, 2nd Session, March 25, 1980.



use picture endorsements of famous entertainers to lend legitimacy to their policies. Other ads exaggerate the costs of cancer treatment by two or three times and contend that the actual rate of incidence for the disease is higher than reported.

The committee reported that companies frequently mislead consumers on the total amount of benefits available. While ads may claim benefits up to \$250,000, the few who actually receive any benefits at all usually get only \$1,200.

The report indicates that the companies make 60 to 80 cents on each dollar of premiums, an amount that is especially striking considering that legitimate health insurers return all but 20 cents on the dollar to policyholders in the form of benefits and claims paid each year.

The report calls on the states to review their insurance laws to better protect consumers, especially the elderly. Several states allow mail-order policies that do not require the approval of the state insurance commissioner. It also calls for congressional action to forbid the sale by mail of policies that cannot be sold by agents in person. Congress was urged also to require that Medicare supplemental policies, underwritten by private insurance companies, cover a broad range of health problems and not just a single "dread disease" such as cancer.

#### *Problems with Medicare and Supplemental Insurance<sup>1</sup>*

Research undertaken by Congress in 1965 revealed that older Americans are sick three times as often and experience periods of suffering and recuperation by three times that undergone by younger people. Their health bills, on average, are three times as great as those of younger Americans. These staggering health costs come at a time in life when having retired, senior citizens can expect only half the income of their younger counterparts. While younger adults typically may have spent 10 percent of their income for health care, it was not uncommon for older Americans to have spent 30 percent of their income in pursuit of needed health care.

In passing the Medicare Act, the Congress took note of these inequities. It declared in the preamble to this historic legislation that access to health care was a right for all Americans. Congress declared that there should be no discrimination with respect to access to the finest health care America has to offer.

1. The information contained in this section was drawn largely from a staff study by the Select Committee on Aging, "Abuses in the Sale of Health Insurance to Elderly in Supplementation of Medicare: A National Scandal," U.S. House of Representatives, 95th Congress, Second Session, November 28, 1978, pp. 1-39.

As conceived, the Medicare program was a true national insurance program for the elderly. It was to be financed by taxes paid by employees and employers with minimum supplementation by government. The accumulated money would be held in a trust fund. Workers who contributed during their working years could draw from the trust fund to finance the health care costs they would incur in their later years.

From the beginning there was a misunderstanding about the extent of Medicare's coverage. Partly the result of wishful thinking and partly the result of the distribution of misleading publications which trumpeted Medicare's virtues, senior citizens were left with the impression that Medicare offered them comprehensive coverage and would pay 80 percent of their health care costs. This was not the case, nor was it the intent of Congress. Medicare explicitly excludes from coverage an array of vital services used by the elderly, such as: (1) self-administered drugs; (2) dental care (except jaw surgery), (3) eyeglasses or eye examinations, (4) hearing care or examinations, (5) custodial nursing home care, (6) home health care, and (7) routine physical examinations. In the years following enactment, millions of senior citizens have had their illusions rudely shattered, having been left with sizeable bills which Medicare refused to pay.

In terms of Medicare, the escalating costs of health care have meant that America's aged population have had to pay more out of their own pockets to participate in the Medicare program. Moreover, they have assumed an increasingly larger share of total health care costs because of the exclusion of certain medical services and drugs from coverage. Furthermore, it has been increasingly difficult for them to find a doctor who will accept what Medicare has to offer as full payment. Most physicians refuse to take "assignment," the technical term for billing Medicare directly and accepting payments based on a fee schedule. Instead, they bill and collect from the patients, leaving the elderly to fill out the paperwork and seek repayment from Medicare. The paperwork generally confounds the elderly — so much so that for-profit firms are springing up all across the country offering the service of helping the elderly fill out their Medicare forms. Collection from Medicare is a slow process and inevitably older Americans are left with a large portion of their medical bill for which Medicare will not provide reimbursement.

Because of Medicare's restricted benefits, older Americans are fearful that catastrophic illnesses will wipe out their meager savings and leave them destitute. There is a great fear that even the cost of medication and treatment for chronic illness will become too large a burden to carry. They are concerned that they may become a burden to their families and loved ones. There is a fear of going on welfare — even though an increasingly large number of Americans must turn to Medicaid, the welfare medical program, to pay for the cost of their health care. This is particularly true for those who need nursing home care. Nursing home care is so expensive that most elderly quickly use up their assets and depend on Medicaid to defray future costs. Medicaid pays for about 46 percent of the nation's total nursing home bill.

It is partly out of the wisdom that comes from experience and partly out of fear that senior citizens have purchased health insurance policies to supplement Medicare. It is wisdom that motivates them to buy one policy to help pay Medicare's co-payments and deductibles. It is fear that motivates them to buy two, three, four or sometimes as many as 30 policies from various insurance carriers in the hope of insulating themselves against catastrophic illness and dread diseases such as cancer, or to pay for the costs of a stay in a nursing home, or perhaps to meet their burial expenses.

Unfortunately, few elderly understand that the multiple policies they buy often contain a clause which says only one policy will pay. Very frequently, the policies which they have purchased are worthless. It is quite common for senior citizens to pay \$200 a year in premiums for a policy which will pay them no more than \$80 in benefits.

The simple fact is that no policy covers all of Medicare's gaps. Actually, the benefits of Medicare supplementary policies are rather limited. They account for only five percent of the average payment for health care. There are often long waiting periods before the elderly are eligible for full benefits, in addition to standard exclusions for various illnesses or diseases. It is quite common for insurance companies to reject a claim on the grounds that the claim is attributable to a prior disease or condition.

Two-thirds of America's elderly have at least one such supplementary insurance policy; many have two or more policies. There are an estimated 19 million such policies in force at the present time. Based on an average premium cost of \$200 a year, the elderly will spend almost \$4 billion on such policies annually.

Supplementary policies have spawned numerous complaints to state departments of insurance and the Congress, particularly from senior citizens. Nearly a third of the complaints received by the Pennsylvania Department of Insurance in 1974 related to health insurance; only auto insurance generates more complaints.<sup>1</sup> Commissioner William Shepard stated that 46.9 percent of the complaints were valid and that the elderly account for a disproportionate share of these complaints. In 1977, New York and Florida received 57,000 and 34,000 complaints respectively, about 40 percent of which related to the sale of health insurance.

#### *Government Oversight of Supplementary Policies*

The states have almost exclusive authority to regulate the insurance industry. The Federal Government largely relinquished its responsibility for regulating the field of private insurance when congress enacted the McCarran-Ferguson Act in 1945.<sup>2</sup> The law states that no act of Congress, unless specifically relating to the business of insurance, shall be construed to "invalidate, impair or supersede" any state laws regulating the business of insurance. However, Congress did not close the door to federal regulation completely — it reserved the right to regulate through anti-trust laws and the Federal Trade Commission "to the extent that such business is not regulated by State law." Even though this reservation of power exists in law, it has never been exercised; hence, when one speaks of the regulation of insurance, the appropriate reference is to the state insurance departments.

In order to determine the extent of state regulation in the area of Medicare supplementary policies, a comprehensive questionnaire was sent to every state insurance commissioner on July 18, 1978 by the Select Committee on Aging of the U.S. House of Representatives. The responses indicated that the regulatory provisions of state laws vary greatly. However, in 39 states insurance commissioners possess wide authority to regulate the industry. In the broadest reach, state laws authorize the insurance commissioner to require every company to file their policies with, and gain the commissioner's approval before such policies may be sold. The commissioner may also specify standards and regulations which must be complied with by companies and their agents who do business in the state.<sup>4</sup> Absent specific statutory provi-

1. Select Committee on Aging, *supra*, pp. 251-318.

2. U.S.C.A. Title 15, ss. 1011-1015.

sions, he/she may adopt rules and regulations which govern such subjects as: (1) readability of the policy and key terms; (2) conditions of eligibility, exceptions, preexisting conditions and minimum benefits; (3) nonduplication of coverage; (4) cancellation rights, termination and renewability; (5) unit pricing, rates, commissions and unfair trade practices and (6) minimum loss ratio and replacement requirements. Moreover, the commissioner is empowered to disapprove any policies offered for sale if he finds premiums excessive, inadequate or unfairly discriminatory.

The report pointed out that the average state insurance department has oversight responsibilities in respect to operations and activities which generate almost \$4 billion in insurance premiums yearly. The average department is responsible for licensing 36,483 agents. Every year the typical department must review 6,127 health insurance policies before they can be offered for sale in the state. The department will receive and respond to 9,641 complaints relative to health insurance, but the average state will have only one investigator for every 643 complaints it receives.

Given these facts, it should be little surprise that the average state will revoke the licenses of only five agents each year for violations in conjunction with the sale of health insurance. No state fined or disciplined any insurance companies for similar practices. In fact, officials in only 11 states reported that they fined or formally disciplined companies during the period of 1975-1978 for a variety of irregularities not associated with health insurance specifically.

Among other findings, the committee report notes a distinct absence of the exercise of rule-making authority by state insurance officials in the average state. A majority of states have adopted regulations in only two areas — 26 states had regulations allowing the policyholder to cancel with 15 days after issuance without obligation for any payment and 33 states reported rules covering minimum benefits.

#### CHAPTER IV. MASSACHUSETTS DEVELOPMENTS

##### *Related Massachusetts Statutory Provisions*

The Attorney General as the chief law enforcement agent in the state has taken the lead in the protection and enforcement of the rights of elderly citizens. Knowledgeable staff at the Attorney General's office

indicate that the state's aged are particularly vulnerable to incidents and episodes of (a) vendor fraud, especially nursing home operators, doctors and pharmacists, (b) Medicaid fraud, (c) patient abuse, (d) medigap insurance, (e) home improvement schemes, (f) arson and (g) violent crime. The Commonwealth has been a pioneer in the development of both consumer protection and civil rights legislation and as a consequence there is a panoply of legal remedies and enforcement mechanisms available to the criminal justice system and to regulatory agencies to protect the public health, safety and welfare of the state's citizenry. The following sections are devoted to brief descriptions of the more important relevant statutes, with emphasis on those laws which have greater application to the elderly.

*Regulation of the Sale of Hearing Aids (G.L. c. 93, s. 71 et seq.).* This statute requires that a person must first obtain medical clearance and a hearing test evaluation from a physician, audiologist or otolaryngologist before entering into a contract for the purchase of a hearing aid unless the prospective purchaser has obtained the proper medical clearance in the past. No physician, otolaryngologist or audiologist may have any interest in a business which fits and sells hearing aids for a profit; and no person may offer an inducement, monetary or otherwise, to a physician, otolaryngologist or audiologist to influence a patient's purchase of a particular hearing aid. These provisions among others provide comprehensive protection to all those who would enter into a contract to purchase a hearing aid. Violations of these sections constitute an unfair and deceptive trade practice under the provisions of Chapter 93A of the General Laws.

*Regulation of Business Practices for Consumer Protection (G.L. c. 93A).* This statute is often referred to as the "Baby" Federal Trade Commission Act for the consumer and small businessman. It provides legal protection to individual citizens against the whole range of potential abuses that may occur within the marketplace, such as unfair selling tactics, bait and switch advertising, "tie-in" arrangements, deceptive advertising, misleading identification of goods or services and nondisclosure of defects in merchandise.

Chapter 93A was initially enacted as a consumer protection act. It was amended in 1972 by adding Section 11 to give it broad application

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to a wide range of business disputes.<sup>1</sup> The effect of Section 11 is to give aggrieved parties a private right of action for conduct violating the Federal Trade Commission Act.<sup>2</sup>

Section 2 defines the mercantile or trade actions which constitute violations of Chapter 93A. Section 2(a) stipulate that "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade of commerce" are unlawful. Section 2 further provides that in construing the provisions of Section 2(a) the courts are to be guided by decisions of the Federal Trade Commission Act. In addition, Section 2 gives the Attorney General authority to make rules and regulations interpreting Section 2(a) so long as such rules and regulations are consistent with Federal Trade Commission and Federal court interpretations of the Federal Trade Commission Act.

*Sale of Generic Drugs (G.L. c. 112, s. 12D).* This statute empowers the prescribing practitioner to authorize the pharmacist to make an equivalent interchangeable substitution, if applicable, of any drug he/she prescribes as long as it is so noted on the dispensing instructions to the pharmacist. In cases where interchange is permitted as indicated by the practitioner, the pharmacist shall dispense a less expensive reasonably available interchangeable drug product as listed in the most current drug formulary. As has been noted in the previous chapter of this report, the elderly are heavily dependent on drugs and various forms of medication. Thus, this procedure offers opportunities for substantial savings to the aged.

*Compensation for Victims of Violent Crimes (G.L. c. 258A).* The purpose of this law is to provide victims of violent crime with compensation for loss of earnings or support and out-of-pocket loss for injuries sustained as a direct result of the crime. Out-of-pocket loss means reasonable medical care or other services necessary as a result of the injury. In the case of the death of a victim as a direct result of the crime, a dependent may file a claim.

The process originates with the filing of a petition in the district court where the claimant lives within one year after the occurrence of the crime, or not later than 90 days after the death of the victim,

1. Section 11 gave a private right of action to "any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce, of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by Section 2 (or rules promulgated under Section 2)."

2. The Federal Trade Commission Act does not provide for a private right of action; it provides for enforcement proceedings by the Federal Trade Commission (15 U.S.C. 45[b]).

whichever is earlier. The court may, upon a showing of good cause, extend the time for filing. After the appropriate filing has been completed, the district court notifies the Attorney General of the claim. The Attorney General then conducts an investigation and files his report with the court. A hearing is then held and a finding made by the district court judge. The court may allow reasonable attorneys' fees, not to exceed 15 percent of the amount awarded. These fees are paid from the award and are not in addition thereto.

Up to a maximum of \$10,000 can be recovered. There is a \$100 deductible and a further deduction for amounts received or to be received as a result of the injury (a) from or on behalf of the offender, (b) from insurance programs, or (c) from public funds.

In the period between 1969, when the program was created, and 1980 there were 1,579 claims awarded for a total of \$5,836,125, the average claim being \$3,696. Some criticism of this program has focused on the delay involved in the actual payment of awards. Often there are delays of up to four months from the time of the award decision to payment. This delay is usually caused by the depletion of the program's budget before the end of the fiscal year, thereby requiring the filing of a supplemental budget with the Legislature. This delay in awarding legitimate claims will usually have a more deleterious effect upon the elderly claimants who are generally less able to recover from substantial out-of-pocket loss.

*Insurance Policies Cancellable at Age 65 (G.L. c. 175, s. 110H).* This statute provides that every company which issues a policy of insurance under the provisions of Section 108 of Chapter 175 which is cancellable when the insured reaches age 65 shall, 60 days prior to the date of intended cancellation, notify the insured that such policy will be cancelled and the date thereof. If the company fails to notify the insured, the policy will remain in effect until such notification or until 90 days after the insured reaches age 65, whichever comes first.

*Reduction in Motor Vehicle Insurance Rates for the Elderly (G.L. c. 175E, s. 4).* This section sets standards for the regulation of rates for motor vehicle insurance. Under paragraph (d) of Section 4, motor vehicle insurance rates for insured citizens age 65 years or older, who otherwise qualify for the lowest rate classification applicable to drivers generally, shall be assessed at 25 percent less than the applicable rate for such classification.

*Speedy Trial for Persons 65 Years of Age or Older (G.L. c. 231, s. 59F).* In any civil action in any court in the Commonwealth in which one or more of the parties (plaintiff or defendant) is 65 years of age or older, the court shall, upon motion of such person, advance the proceeding for speedy trial so that it may be heard and determined with as little delay as possible.

*Patients' and Residents' Rights (G.L. c. 111, s. 70E).* This statute guarantees certain rights and privileges to every patient or resident of a convalescent or nursing home, rest home, charitable home for the aged or other facility licensed by the departments of public health or mental health. Some of the patients' rights include (a) confidentiality of all records, (b) the right to prompt life-saving treatment in an emergency without discrimination, (c) the right to privacy during medical treatment within the facility and (d) the right to receive a copy of all charges submitted to a third party. Every patient or resident of any facility except a patient who is a member of the health maintenance organization which owns or operates the institution must receive a written notice thereof. In addition, the patient's "bill of rights" must be conspicuously posted in the facility.

*Readability of Insurance Policy Forms (G.L. c. 175, s. 2B).* This statute, although not age specific, does protect the elderly from having to deal with unnecessarily confusing insurance forms. The text of all insurance forms must obtain a "Flesch" scale of readability score of fifty. This measuring procedure is explained in the text of the statute. Also, this law allows the Commissioner of Insurance to impose additional readability tests if he finds that such tests are equivalent in function. This statute does not apply to any casualty or property insurance which is issued to insure a business, professional or governmental operation or any form of life insurance, accident or health insurance, or annuities which is issued in connection with any employee benefit plan. There are other exceptions, but generally this statute can be applied to all "individual" insurance policies issued here in the Commonwealth.

As the preceding capsulization indicates, there is a relative absence of age specific law in the Commonwealth. The approach that has been taken by Massachusetts and other states' lawmakers has resulted in the enactment of consumer protection laws of general application, devoid of any bias or preference in the case of age, sex or other considerations.

In the final analysis, the elderly are not victims of any crime or fraudulent activity that cannot also be committed against any other age group. Therefore, age specific statutory protection may be unnecessary, in fact, in some cases, it may be so discriminatory as to invite constitutional challenge on the grounds of denial of the equal protection of the law guaranteed by both the State and Federal constitutions.

#### *Proposed Crime Legislation*

On February 27, 1981, Governor Edward J. King submitted to the Massachusetts Legislature a comprehensive anti-crime package. Included in this legislation is a bill requiring minimum sentences of imprisonment for repeat offenders convicted of certain violent crimes committed against persons 65 years of age or older (House, No. 6318).

In the Governor's accompanying message to this legislation, he made the following statement of intent:

This bill is designed to single out senior citizens for special legal protection so that they may live free from violent street crime. Those who commit crimes of violence against senior citizens will be targeted for new criminal penalties, with mandatory minimum sentences of imprisonment to be imposed on those who are convicted of such crimes two or more times. The principal focus of this bill is violent street crime — purse snatchers, muggers, strong-arm robbers — in short, those who rob, beat or assault our senior citizens. These are the kinds of crimes which affect the elderly disproportionately, with generally greater resultant physical harm, financial loss and emotional trauma for this age group than any other: *physically*, because senior citizens may be far less able to defend themselves from physical assault and recover less easily from bodily injuries; *financially*, because they are more likely to be on low or fixed incomes and can least afford to lose their savings to a mugger or robber; and *emotionally*, because long after the crime has been committed, senior citizens must live with the lingering fear of crime, a fear which pervades and indeed may paralyze their lifestyle. This state of affairs is unacceptable.

Governor King's crime bill would apply mandatory sentences for



five different offenses perpetrated against the aged. Assault and battery with a dangerous weapon, assault with intent to rob while being armed, and unarmed robbery all would carry a minimum two-year sentence; assault with a dangerous weapon and larceny from a person would both carry a minimum one-year sentence. These sentences would be imposed only if the defendant had committed at least one prior offense of a similar nature against an elderly person. Also, no parole, probation, suspended sentence, continuance without a finding or filing of the criminal charge would be allowed under this statute.

The goal of this legislation is to emphasize the "certainty" of punishment rather than the "severity" of punishment. Its proponents maintain that mandatory sentences will have a greater deterrent affect than harsher penalties which have been construed to be "excessive" punishment by some state courts.<sup>1</sup> Also, age specific legislation that mandates harsher penalties for victimizing the aged may discriminate in favor of the aged and may be in violation of the equal protection clause of the Fourteenth Amendment although this issue is yet to be judicially determined.

In addition to the Governor's bill, 12 measures which also propose increased penalties for victimizing the aged are awaiting consideration by the Legislature: Senate, Nos. 1792, 1793, 1839, 1905 and 1906; House, Nos. 5419, 5426, 5513, 5521, 5606, 5648 and 6969. Five of the bills call for mandatory sentences for various street crimes, violent crimes, and for breaking and entering into a senior citizen's home. Some of the bills include the handicapped under the same special category as the elderly. Seven of the remaining proposals would set various grades of increased penalties or longer sentences for various street crimes, violent crimes, purse snatching and breaking and entering.

#### *Massachusetts Department of Elder Affairs*

Specialized and official state activity and programs to assist the elderly have been undertaken for at least the past 27 years. In 1954, a Governor's Council on Aging was formed and renamed the Commis-

1. In 1977, the Louisiana Legislature enacted legislation providing that any person convicted of (1) manslaughter, (2) simple rape, (3) forcible rape, (4) aggravated assault, (5) aggravated battery, (6) simple battery (7) aggravated kidnapping, (8) simple kidnapping or (9) false imprisonment, when the victim of such crime is 65 years or older would be subject to, in addition to any other additional penalty imposed, five years imprisonment without benefit of parole, probation or suspension of sentence (Chapter 14:40.1). However, on March 3, 1980, the Louisiana Supreme Court declared the statute unconstitutional on the grounds that the punishment was "excessive" under the provisions of Article I, Section 20 of the Louisiana Constitution, *State of Louisiana v. Robert H. Goode, Jr.*, Supreme Court of Louisiana No. 65879.

sion on Aging in 1964. In 1968, the Commission became part of the new Department of Community Affairs under the executive reorganization law.<sup>1</sup>

With the establishment of the Executive Office of Elder Affairs in 1970,<sup>2</sup> a separate and distinct agency was created to deal with the problems of the aging and the elderly population. The executive office was elevated to cabinet status in 1973, and since that time, the Department of Elder Affairs, headed by the Secretary, has been responsible for program development, planning and advocacy for the Commonwealth's older citizens.

Charged by statute with overseeing a number of programs for the elderly, the Department of Elder Affairs, as the Commonwealth's chief public advocate for the aging population, coordinates its programs with related activities undertaken by other state agencies including the departments of Public Health, Mental Health, Public Welfare, Social Services, Communities and Development, Energy, and Manpower Development. The Department assists in, and reviews, the drafting of regulations for long-term care facilities and nursing homes, medical care and public assistance, state-aided housing for the elderly, home-maker agencies, transportation and services for the handicapped.

Under Chapter 19A of the General laws, the Department has certain responsibilities, including:

Providing assistance to local cities and towns and helping identify and coordinate local resources.

Facilitating a free flow of communications important to the elderly throughout the state.

Acting as a "clearinghouse" for information and materials relating to the elderly.

Initiating and developing research to aid in solving local regional and statewide aging problems.

Coordinating, as public advocate, programs of other state agencies to improve services to the elderly at all levels.

Assisting communities to plan, develop and implement home care programs.

Facilitating the work of government and private agencies to improve conditions for the older citizens.

1. G.L. c. 23B, s. 1.

2. G.L. c. 6A, s. 2.

Seeking federal aid for programs and services for the elderly and working with state and local governments and public and private educational institutions and agencies to maximize federal assistance.

Programs for older persons are as varied as the sources of financial support and their basis of administration. At the local level, most cities and towns have established a Council on Aging funded in large part by those communities as part of their local budgets. The Department of Elder Affairs, which provides some assistance to local councils, is responsible for carrying out the mandates of the Older Americans Act of 1965 as amended (most recently in 1978), the federal government's chief source of support for state and regional elder services. As the state agency designated to meet the responsibilities of the Act, the Department has established 23 Area Agencies on Aging (AAA) to plan and coordinate services for elders in cooperation with other appropriate elder advocacy groups and Councils on Aging. In addition, the Department has designated 27 home care corporations to receive state funds and has approved nutrition programs serving over 300 sites, utilizing state and federal monies.

*Legislation.* Through its legislative liaison staff, the Department both prepares and supports legislation on behalf of the elderly. Among successful efforts of the 1980 legislative session were:

- (1) A major housing bond issue act to expand public housing for elderly residents.
- (2) A state program for emergency fuel assistance, one of the only such programs in the United States.
- (3) Legislation protecting the rights of elder tenants in cases of condominium conversion.
- (4) An increase in monthly allowances for members of the Volunteer Elder Service Corps, which will expand in size by 50 percent during 1980-81.
- (5) A 16 percent increase in the Department's budget.

In addition, DEA's Office of Advocacy monitors national legislative issues such as fuel assistance, age discrimination regulations and changes in the Older Americans Act and its implementing regulations.

*Abuse of the Elderly.* After a study sponsored by the Department of

Elder Affairs documented physical and emotional abuse of older citizens as a serious problem, DEA began a series of steps to combat the problem in Massachusetts. Departmental efforts have ranged from public education in making the extent of the problem known to development of legislation that would require health professionals to report abuse.

*Legal Services Development.* A 1978 amendment to the Older Americans Act mandates that each Area Agency on Aging in a state expend some portion of its federal dollars allocation on legal services for the elderly. Although there is no statutory prescription for a "means test" or income eligibility guideline, it is anticipated that those services will be furnished to people with the greatest need. The program of legal services development in Massachusetts has made significant progress in a short time.

During 1979 and 1980, legal services for the elderly such as assistance in the probate process and filings for guardianship proceedings took on new importance. Following completion of a statewide survey by the Department to identify legal assistance services currently available as well as existing service gaps, the Advocacy Assistance Legal Services Development Program accelerated its efforts to link those in need of legal services with agencies throughout the Commonwealth that provide such assistance at no charge. Among specific services provided are those dealing with guardianship, conservatorship, consumer protection, tenant and landlord issues, and individual's rights under such public benefit laws as Medicaid, Social Security and Supplemental Security Income.

During 1980, completion of the state legal services network was achieved. Program staff of the Department of Elder Affairs, working cooperatively with area agencies on aging, assisted the latter in the process of identifying, and contracting with, various legal service providers.

A model legal services contract was also developed. The demonstration contract may be utilized by area agencies in their contracts with legal service providers. The DEA's Legal Services Developer also provides instruction and technical assistance in various areas of the law affecting the elderly to numerous groups of elders throughout the Commonwealth.

*Information Services.* During 1979-80, major steps were taken by the Department of Elder Affairs to increase the level of information services provided to the public. At the same time, the members of the Elder Services Network throughout the state met the challenge of new issues, needs and problems, such as the growing demand for emergency fuel assistance, by upgrading the level and increasing the amount of their own public service media, brochure and outreach materials, and the implementation of regional telephone hot lines.

In October 1979, the Department established a toll-free Hot Line. That service and the on-going public information lines at DEA's Boston headquarters respond to nearly 10,000 questions, concerns and requests for information from elders, elder advocates, public officials, community leaders and students.

In line with the inauguration of the Hot Line, the statewide circulation of the bi-monthly Department newspaper, *Elder Affairs*, was expanded in 1980 from 1,500 to 4,500 senior citizens, elder advocates, local officials, schools, public libraries and programs affecting elders. This publication provides detailed information on programs and services of the Department of Elder Affairs, issues of statewide significance to elders such as the state budget, Governor King's comprehensive housing, crime and fuel programs, federal government developments, and issues papers on subjects for the future.

Recently, the Massachusetts Nursing Home Ombudsman Program developed and produced two important handbooks for elder advocates: *The Legal Handbook for the Elderly* and *The Legal Resources Handbook for the Elderly*. The first publication examines the areas of most common need for legal services. The second volume is a comprehensive directory listing names of persons, agencies, publications and documents that can assist older advocates in finding help and information. Topics covered include discrimination, consumer protection, health programs, housing issues (including landlord-tenant relations), public welfare, Social Security, unemployment insurance and veterans' benefits.

*Crime Prevention Assistance.* In every state and in each of more than 550 communities throughout the county, an agency on aging has been designated under Title III of the Older Americans Act to serve as an advocate for older persons, to coordinate activities in their behalf,

and to provide information about services and opportunities for them.

Another source of information is the Massachusetts Committee on Criminal Justice. Equivalent agencies operate in all states and territories of the United States. Each agency receives federal block grant funds from the Law Enforcement Assistance Administration (LEAA) of the Department of Justice, pursuant to the Omnibus Crime Control Act. These funds are used in designing and developing improved methods of dealing with the nation's problems of crime and delinquency, including crimes against older persons, which is a specific priority area included in the 1976 revisions of the Omnibus Crime Control Act.

Funding for a wide range of activities, which might include activities pertaining to security against crime for the elderly, is made available through Community Development Block Grants administered by the Department of Housing and Urban Development. The grants are paid to local governments and spending priorities are determined at the local level. Programs assisted could include home improvements or neighborhood facilities for the elderly. Funds for housing repair assistance are made under the Home Improvement Loan Insurance program, Title I of the Housing and Community Development Act of 1974. The general objectives of the program include provision of adequate housing, a suitable living environment and expanded economic opportunities for lower income groups.

Under Title III of the Older Americans Act, which authorizes support for state and community programs for the elderly, the Administration on Aging allocates funds to designated state agencies, which in turn make awards to area agencies on aging to foster the development of comprehensive and coordinated services to the elderly. Home repair services for older Americans constitute one of the program areas given priority status under the 1975 amendments to the act. Although home repair assistance is not intended primarily to improve security of homes against crimes, this can be one of the benefits of such home repairs.

#### *Silver-Haired Legislature*

In November 1980, Governor Edward J. King and the Department of Elder Affairs sponsored the first session of the Massachusetts Silver-Haired Legislature. Earlier in the year, elderly citizens through-

out the Commonwealth were elected in their respective senatorial and representative districts by a popular vote of their peers. These delegates held a mock legislative session in the State House for three days, discussing, proposing and acting on issues of concern and interest to the contemporary Massachusetts elderly population.

A modified set of parliamentary rules was devised to regulate procedures and six committees were organized to initially consider the various proposals brought before the session (Commerce and Labor, Education and Housing, General Legislation, Health, Human Services and Elder Affairs, and Ways and Means). The Silver-Haired Legislature acted on 12 priority proposals over the course of three days, including one proposal which would provide mandatory sentencing for a violent crime committed against a senior citizen. These proposals which represent issues of primary concern to the elderly population in the Commonwealth relate to:

Fuel adjustment surcharge.

Tuition exemption for Senior Citizens (60+) attending state colleges.

Security protection at elderly housing developments.

Mandatory sentence for violent crime committed against Senior Citizens.

Intervention by the Attorney General and Department of Public Health to protect nursing home residents if nursing home is in danger of closing.

Use of the Living Will.

Funding of municipal Councils on Aging.

Nutrition programs for the elderly.

Home care service.

Tax exemption on property tax for certain persons over 65.

Motor vehicle license and registration fees for individuals age 65+.

Reductions in the taxation of interest and dividends for persons age 65 and over.

#### *Crime and the Elderly Conference*

The Massachusetts Committee on Criminal Justice (MCCJ) in cooperation with the Massachusetts Department of Elder Affairs, and

the Executive Office of Public Safety presented a statewide conference on Criminal Victimization of Older Americans on December 10, 1980. The primary goal of the conference was the development of policy recommendations concerning crime and the elderly. These recommendations will be incorporated into the policy platform to be developed in April 1981 for the Massachusetts White House Conference on Aging and will be presented to the National White House Conference on Aging which will be held in December 1981.

Governor King addressed the conference and announced that shortly he would be sending legislative proposals on crime to the General Court. Attorney General Francis X. Bellotti, another featured speaker, also acknowledged the need for increased penalties for offenses committed against the elderly and he outlined the current efforts of his office in combating crime against the aged.

At the conference, it was announced that an "Elder to Elder Escort Assistance Program" is expected to begin in the Spring. This program will offer the use of volunteer retirees to escort and assist other elder citizens to and from various local destinations such as supermarkets, shopping malls and hospitals. The program will be sponsored by the Department of Elder Affairs and administered through the MCCJ.

**END**