Explanatory Statement

While we recognize that many adults live long, healthy and productive lives well beyond the age of 60, for the purposes of this Report, the Elder Law Task Force defines an elder as a person 60 and over, based on the use of that age by the Pennsylvania Department of Aging, the Area Agencies on Aging, the United States Administration on Aging and most aging services providers. This age originally comes from the Federal Older Americans Act (which created the “aging network” of services for older Americans). In addition, Pennsylvania Act 70 of 2010, which created Adult Protective Services (a reporting and investigative system for the under 60 population), defines an “adult” as an individual between the ages of 18-59. Thus, the Task Force determined an “older adult,” or “elder,” would be defined as 60 and over.

While some of these recommendations are equally applicable to younger adults with diminished capacity, the focus of the Elder Law Task Force is on elders.

Disclaimer Statement

The materials contained herein, and the opinions expressed in this Report and Recommendations of the Elder Law Task Force, represent the views of the Elder Law Task Force and do not necessarily represent the official views of the Supreme Court of Pennsylvania. The Report is for informational purposes only as a service to the public and other interested entities. This Report does not constitute legal advice or a substitute for the advice of legal counsel.

If you suspect an elder is being abused, please call:
Statewide Elder Abuse Hotline: 1-800-490-8505
or
Office of Attorney General Elder Abuse Hotline: 1-866-623-2137
Table of Contents

Forewords:
- Chief Justice Ronald D. Castille ............................................................... 2
- Madame Justice Debra Todd ................................................................. 3
- Court Administrator of Pennsylvania Zygmont A. Pines ...................... 4

Preface ........................................................................................................ 6

PART I
Members and Staff of the Elder Law Task Force ........................................ 7
Background .................................................................................................. 10
Scope of the Challenge Nationally and in Pennsylvania ......................... 10
Guardianships ............................................................................................ 12
Elder Abuse and Neglect ........................................................................... 17
Access to Justice ......................................................................................... 22
Need for the Elder Law Task Force ............................................................ 23
Mission of the Elder Law Task Force ......................................................... 25
Methodology ............................................................................................... 26
Structure and Focus of the Elder Law Task Force ....................................... 26
Elder Law Task Force and Committee Meetings ......................................... 27
Presentations Made to the Elder Law Task Force ........................................ 28
Elder Law Task Force Research and Analysis .............................................. 29

PART II
Reports of the Elder Law Task Force Committees ..................................... 31
Guardians and Counsel Committee Report ............................................... 32
Guardianship Monitoring Committee Report ............................................. 112
Elder Abuse and Neglect Committee Report ............................................. 186

PART III
Overarching Findings and Recommendations of the Elder Law Task Force Concerning Court Administration, Judicial Education, Funding, and Public Awareness ............................................. 220
Categorized Recommendations of the Elder Law Task Force .................... 233
- Recommendations to the Supreme Court of Pennsylvania .................... 233
- Recommendations to the Office of Elder Justice in the Courts
  and to the Advisory Council on Elder Justice in the Courts ................... 239
- Recommendations to the Legislative Branch ......................................... 241
- Recommendations to the Executive Branch ......................................... 243
- Recommendations to the Federal Government ...................................... 244
- Recommendations to Prosecutors ......................................................... 244
- Recommendations to Victim Services Providers .................................... 244
- Recommendations to Bar Associations .................................................. 244
- Recommendations to the Public ............................................................. 245

Abbreviations and Acronyms ..................................................................... 246
Definitions .................................................................................................. 248
Endnotes ..................................................................................................... 255
Bibliography ............................................................................................... 263
Appendices .................................................................................................. 272

Appendix A:
  March 31, 2014, letter to the Chairman and Ranking Members of the U.S. House Committee on Appropriations and the Subcommittee on Commerce, Justice, Science and Related Agencies .............................................. 272

Appendix B:
  April 11, 2014, letter to the Chairwoman and Ranking Member of the Subcommittee on Commerce, Justice, and Science of the U.S. Senate Appropriations Committee ...................................................... 280

Appendix C:
  Red Flags of Abuse Fact Sheet ............................................................... 283

Appendix D:
  11 Things that Anyone Can Do to Prevent Elder Abuse Fact Sheet .......... 285
It is said that societies are judged on how they help their most vulnerable.

In 2013, the Supreme Court of Pennsylvania formed the Elder Law Task Force, chaired by Madame Justice Debra Todd, to study the growing issues that impact the elder community, including guardianship, abuse and neglect, and access to justice. The mission of the task force has been to lay the foundation for substantive improvements in the way elderly citizens in Pennsylvania interact with the court system and to deliver a blueprint to address those challenges.

Elder abuse is estimated to affect about 5 million Americans each year. The direct medical costs associated with violent injuries to elders are estimated to add more than $5.3 billion to the nation’s annual health expenditure.

Research suggests that one out of every 10 people 60 and older who live at home suffers abuse, neglect or exploitation. Only one in 24 cases of elder abuse is reported to authorities. Abuse also occurs in institutional settings. In a 2000 study, 44 percent of nursing home residents report having been abused and 95 percent reported that they or another resident had been neglected.

Tragically, elder abuse is also deadly. According to a study published in the Journal of the American Medical Association, victims of abuse, neglect and financial exploitation have three times the risk of dying prematurely.

Contained in this report, prepared by 38 experts who comprised the task force, are recommended solutions to issues involving guardianship, elder abuse and neglect, and access to justice, including court rules, legislation, education and best practices. Next steps include review by the Supreme Court of recommendations related to the courts and referral to the General Assembly of those recommendations that require legislative consideration.

Pennsylvania currently ranks fourth in the nation in percentage of people 60 and older. As of the 2010 census, nearly 2.7 million Pennsylvanians – 21.4 percent of the state’s population – were over 60 and that number is projected to continue to increase to 3.3 million by 2020. With these statistics in mind, there can be little doubt that serious consideration of the report’s findings is timely.

Now is the time to put in place solutions, such as those contained in this report, which will allow older Pennsylvanians to age without worries that they will be abused or their money will be stolen.

On behalf of my fellow justices and the entire judiciary, I thank Justice Todd, Court Administrator of Pennsylvania Zygmont A. Pines, who served as the task force administrative chair, and the entire task force for their work.

Sincerely,

Ronald D. Castille

Chief Justice Ronald D. Castille
Greetings,

When Chief Justice Ronald D. Castille asked me to undertake the formation and leadership of the Pennsylvania Supreme Court’s Elder Law Task Force, I was both honored and challenged by the daunting responsibility this would entail. My first task was to assemble a “blue-ribbon” panel of experts in all areas of elder law to bring to the table the diverse and critical perspectives of myriad stakeholders in the aging network.

The thirty-six Task Force members who joined Court Administrator Zygmont A. Pines and me on this journey are to be commended for their devotion, their time, and their energy. Each of them provided invaluable insight into the preparation of proposed approaches and solutions to the challenges faced by our Commonwealth in addressing the growing needs of our elderly population.

This Report came to fruition in large part due to the leadership of Court Administrator Pines and our Committee Chairs and Vice Chairs, Judge Joseph O’Keefe, Judge Penny Blackwell, Judge Paula Ott, Attorney Rise Newman, District Attorney Stephen Zappala, and Department of Aging Director Wilmarie Gonzalez, and due to the tireless efforts of our Task Force staff, especially Cherstin Hamel, AOPC Assistant Director of Judicial Programs, and Rhonda Campbell, my Chief Judicial Assistant. I am eternally grateful to Court Administrator Pines and the Task Force members, as well as our capable and dedicated staff, for their commitment to this important project.

Vice President Hubert H. Humphrey once said, “The moral test of a government is how it treats those who are at the dawn of life, the children; those who are in the twilight of life, the aged; and those who are in the shadow of life, the sick, the needy, and the handicapped.” With the release of this Report and Recommendations, the Elder Law Task Force has taken bold and significant steps toward enhancing the quality of life for our Commonwealth’s elder population, and I could not be more proud of the work which has been accomplished.

Sincerely,

Justice Debra Todd
Dear Pennsylvanians:

Public service often provides a great opportunity to participate in a project that leads to a better understanding of the lives and struggles of our citizens. The Elder Law Task Force is a good example.

Among the documents in my "elders file" is a "Dear Harry" letter that appeared in Harry Gross's newspaper column. A son and daughter turned to the financial consultant for help. Ten years ago they persuaded their father, who had a superstitious belief against wills, to give his long-time caretaker a general power of attorney. The children later discovered that the "caretaker" had executed a will for their father, leaving the bulk of his life's savings to the caretaker. Their father is now mentally incapacitated. What, they asked, could they do to help him?

Elder abuse, we have learned, affects both rich and poor alike. It can take many forms — financial, physical, or mental. It can happen in the privacy of one's home, in an open community like a nursing home, or at the bank teller's window. For years, we have recognized the vulnerability of children and our obligation to protect them. Today, we are beginning to realize how much more needs to be done for those at the other spectrum of life, our elders.

It is perhaps easy to read this report and conclude that it concerns "them." But this report is ultimately about us. Some of us are healthy and happy elders. But there is no guarantee that such good fortune will continue. We cannot assume that our basic needs — physical and mental health, economic self-sufficiency and stability, a supportive family — will be met. Someday, all of us, if Providence allows, will join the ranks of elders. It is we, the vulnerable, who may need the support and protections identified in this report.
This report reflects the dedication and labor of so many individuals. First and foremost is the leadership and support of Chief Justice Ron Castille and the Supreme Court of Pennsylvania, especially Justice Debra Todd, who was continually motivated by a genuine concern and passion for our elders. Her insistence and persistence, as well as her inspiring presence, resulted in the comprehensive, detailed report that is the product of 18 months of discussion, debate and deliberation.

This report is admittedly comprehensive and ambitious in scope. It is a report that is intended to be a roadmap for years to come. The reports from the three committees (Elder Abuse and Neglect, Guardians and Counsel, Guardianship Monitoring) represent hundreds, perhaps thousands, of hours of reading, researching and thinking by the Task Force members who, without recompense, devoted themselves wholeheartedly to an endeavor that would improve the lives of our elders and those who care for them.

Likewise, this report would not have been possible without the exceptional diligence, competency and labor of the AOPC staff, particularly those individuals (Darren Breslin, Owen Kelly and Kim Cataldo) who were the AOPC liaisons to the committees. Critical to the realization of this project was the AOPC Assistant Director of Judicial Programs, Cherstin Hamel. She served as an invaluable resource, coordinator, and contributor to this project.

To the Supreme Court, members of the Task Force and all those who made this report possible, I am deeply grateful and proud. It has been a privilege to participate in this important endeavor.

This report reflects much wisdom. Now the challenge is for all Pennsylvanians — especially government, the bar, social service agencies, and financial institutions — to support our elders through action.

Sincerely,

Zygmont A. Pines
Preface

Our nation and Commonwealth are truly blessed to have an increasing number of elders who are living longer, healthier and active lives. Those of the “Greatest Generation” who served our country, and others of advanced years, have contributed, and continue to contribute, to our society. These citizens impart a wealth of wisdom, a deep understanding of our past and an abiding faith that links the past, present, and future. They enable us to pass down traditions from one generation to another, providing stability and continuity. Indeed, many elders are not only active in the workplace, but also are volunteers in our hospitals, nonprofits and government where they selflessly devote countless hours to others. Yet, with the aging population, which has given so much to subsequent generations, come unique challenges that affect our institutions, including the judiciary.

As the Commonwealth’s population continues to age, the court system is facing unprecedented needs. Court cases dealing with the protection of vulnerable elders, including guardianships and elder abuse proceedings, are expected to increase substantially. The Pennsylvania courts’ capacity to “provide services and remedies must be bolstered to meet the growing numbers and needs of older adults. The range, efficacy, and quality of services that abused, neglected, and exploited older persons receive from the courts is a matter of public trust and confidence.”

As the National Center for State Courts (“NCSC”) policy paper on elder abuse states, “[t]he judicial system supports proposed budgets and laws that provide resources for the courts that enable them to develop practices and responses to a host of issues impacting the older population….Additional court resources will become critical as the courts experience an increase in cases involving elder abuse and an aging population as a result of the demographic shift in American society.” The Elder Law Task Force (“Task Force”) concurs with this assessment.

With challenges, however, come opportunities: “State courts are uniquely positioned to create programs and policies that will improve court responses to the growing problem of elder abuse,” guardianships, and access to justice for elders. “Although courts have neither the power of the sword nor the purse, they do have the neutral moral authority to call public and private officials together to discuss how best to address a shared problem. Courts around the country have exercised this authority to explore more effective (and cost-effective) ways of dealing with such matters as substance abuse, child protection, and domestic violence….These endeavors demonstrate how judicial leadership at state and local levels can fuel improvements in the legal system to better address elder law issues.”

The Task Force believes the recommendations contained in this Report lay the foundation for substantive improvements in the way Pennsylvania’s court system interacts with elders, and provide a practical and achievable blueprint to enable the Commonwealth’s courts, as well as other entities, to successfully address the many challenges presented by Pennsylvania’s expanding aging population.