

**United States of America**  
**House of Representatives**  
**Small Business Committee**  
**Subcommittee on Investigations and Oversight**

**Congressional Hearing**  
***Impact of Predators in Long-Term Care on Small Business Operators***

**Wednesday - July 23, 2008**

Testimony by Wes Bledsoe, Citizen's Advocate

Thank you Mr. Chairman, Members of the Committee, and staff for the opportunity to testify about The Impact of Predators in Long-Term Care on Small Business Operators.

"No man left behind!" is a pledge and mantra often used by our brave armed services personnel. Many have given the ultimate sacrifice to fulfill that pledge.

In recent years, I have wondered. Is there a statute of limitations on that pledge? How far does it extend? Does age, ability, or relationship impact this pledge? For as you will hear today, decorated heroes, those who served our nation, their families, and other citizens who made this nation great are falling victim to rape, sexual assault, physical assault, and even murder in America's nursing homes and other long-term care facilities.

It is time to expose one of America's direst secrets, Predators in America's Nursing Homes.

Much like a dead canary in a mine raises the alarm of unseen danger requiring immediate action for survival, so too should Predators in Nursing Homes.

What is the impact on small business operators housing predators in their long-term care facilities? It's bad for business and it's even worse for residents, staff, and even visitors.

As a brief introduction, on Monday, May 8, 2000 my brother James called me with these words, "Grannie's at the hospital. The nursing home has killed her!"

The death of my grandmother, Eunice Allen, on her 86<sup>th</sup> birthday compelled me to become a citizens' advocate. At her graveside, I vowed to never allow another nursing home resident to die due to the negligent acts and abuse in a nursing home.

I was so naïve.

As an advocate over the following four years my investigations, research, analysis, and reporting on neglect, abuse, and incompetence in long-term care earned me the title of "The Nursing Home Watchdog," by various news agencies. Yet, for years Congress, the Government Accountability Office, the media, and citizens from around the nation have documented critical problems in America's long-term care system.

Yet needless suffering and preventable deaths of citizens in term care facilities continue.

Over the years I would take information, issues and documented incidents to officials and the media. The media would also call on me for assistance and responses to stories they were generating.

In mid-April 2004, Ziva Branstetter with the Tulsa World called me for such a response. She advised her staff was working on a story about mental health in Oklahoma. In the process of investigating the story, the paper's staff came across an issue, for which she wanted a response.

The issue? Violent offenders found incompetent to stand trial, placed to live in nursing homes by the order of district court judges.

"What kinds of violent offenses?" I asked.

Ziva replied, "Shooting a police officer four times, or shooting and killing your grandmother with a shot gun, or shooting your wife in the head and attempting suicide yourself, or sexually molesting a child and having sex with your dog!"

My response, "It is inconceivable that anyone would believe it is appropriate to place these predators to live in long-term care facilities with our disabled and elderly loved ones who often cannot physically defend themselves or report what has happened to them."

That phone call changed my life and the focus of my advocacy.

We have known for years about rapes, assaults, and murders in long-term care facilities. Often we hear about staff and on occasion visitors who commit these crimes. However, how often are these crimes committed by fellow residents? Do any of these fellow residents have a history of victimizing others? Could there be a link between violent and sexual offenders living in long-term care and these crimes?

My good friend, Arlene Urbalejo and I quickly began researching the issue of Predators in America's Nursing Homes and other long-term care facilities. These other long-term care facilities include assisted living facilities, residential care facilities, and Intermediate Care Facilities for the Mentally Retarded (ICFMR).

The results of our efforts are stunning. We continue to shock and dismay people, including those in powerful positions, when we communicate our findings to them. Many have said, "I can't wrap my brain around this" and "how can this happen in America?"

Could it be possible, that in America we would knowingly place violent offenders to live with citizens who are not able to defend themselves? Or could not effectively report what has happened to them?

Yes. Case in point, Sebastian Dipasquale charged with Lewd Molestation for touching the private parts of a three year old and Crimes Against Nature for having sex with his dog. Yet a year later, the judge noted "the defendant poses a significant risk to the safety of himself or others if released" yet in the same document ordered him to live in a nursing home.

What about the other residents in the facility?

Is this an isolated case? No.

What kinds of Predators are living as residents in nursing homes and other long-term care facilities?

- Inmates
- Parolees
- Violent Offenders Found Incompetent to Stand Trial
- Sex Offenders Who Are NOT Required to Register
- Registered Sex Offenders
- Violent Felons
- Residents to Assault Others BUT are NOT Charged Because the Assailant and / or Victim are of Diminished Capacity

Our research has focused primarily on Registered Sex Offenders, as this group is most traceable due to sex offender registry laws and online websites.

To date, we have located approximately 1,600 registered sex offenders living in long-term care facilities across America.

Yet, this number is far short of the actual number of registered sex offenders living in long-term care facilities. A few states do not post the entire address of offenders online, which makes it impossible to match against nursing home addresses downloaded from Medicare.gov. Many states do not list all sex offenders online. In one state we were informed that High and Moderate Risk Sex Offenders, who are child molesters and are living in nursing homes, (are downgraded to Low Risk, since they are not near their normal prey.

In keeping with this issue that numbers are greater than we have documented , many sex offenders are not required to register. Most sex offenders who were out of the criminal justice system before the registration laws were enacted are not required to register. Many sex offenders are not required to register for life. Therefore, there are many sex offenders living in long-term care facilities that are not accounted for in any study.

In addition, we have located offenders in long-term care facilities who were listed in at least one sex offender registry as "Absconded" or "Failed to Register." Others listed as "Homeless" or "Transients" also raise concern. Nursing home operators who solicit the homeless in shelters and on the street to live in their facilities, are well documented. Consider the case of Samuel Irving, who was formerly homeless before he was charged with raping and assaulting a female resident.

Who places these Predators in long-term care facilities?

- District Court Judges
- County Sheriffs
- Adult Protective Services Workers
- Department of Corrections Representatives and / or Contracted Agencies
- Self and Family Admissions

It is often stated, these offenders are being sent to the secure lock-down unit in the nursing home.

What is the secure lock-down unit?

It is the Alzheimer's unit. This unit typically has one double door at the end of a hallway that is locked. In many facilities, these units are not staffed twenty-four hours a day, seven days a week. As well, there are no locked doors for resident's rooms.

Placing criminal offenders in the secure lock-down units is truly putting the predators in with the prey. These are typically the most vulnerable residents in long-term care facilities. Most

cannot physically defend themselves. Others cannot believably report what has happened to them when they have been victimized.

What criminal acts have been committed by predators while living in nursing homes?

- Rapes
- Sexual Assaults
- Physical Assaults
- Murder

How many cases have been documented? Over 60 cases. But the number is far more as many rapes and assaults are never reported to law enforcement. Seldom are charges filed and assailants prosecuted, due to "diminished" capacity. Without charges being filed, we cannot identify the assailant and check for a criminal history.

What are the common misconceptions about Predators in America's Nursing Homes? We often hear excuses and justifications by officials, which we refer to as fairy tales, all of which have been debunked several times over.

1. Offenders living in long-term care facilities are all old

57% of the offenders were under 65 years of age, as noted in a study by the Government Accountability Office which was patterned after our 2004 and 2005 Predators in America's Nursing Homes reports.

In A Perfect Cause's 2005 report we cited the following, age breakdown for Registered Sex Offenders living in long-term care facilities across America.

<u>Ages</u>	<u>#</u>	<u>%</u>
Teens	2	0.3%
20's	25	3.3%
30's	54	7.2%
40's	123	16.3%
50's	137	18.2%
60's	155	20.6%
70's	145	19.2%
80's	98	13.0%
90's	15	2.0%
Totals	754	100.0%

\* 754 Out of 800 Records Obtained Documented Ages

When viewing many offenders' photos on sex offender registry sites, people are often amazed at how young and able-bodied so many offenders appear. The question, "What is HE doing in a nursing home?" is a common and emphatic response.

2. Old offenders don't pose a threat

Consider the case of Ivey Edwards, an 83 year old with a long criminal history who raped the former wife of a U.S. Chief who suffered from Alzheimer's disease, while both lived in a Jacksonville, FL nursing home.

Mirl King was an 86 year-old child molester who sexually assaulted two women within a two-and-a-half hour period, in a Reno nursing home.

A 91 year old convicted sex offender, Ralph Allen Ridenour, who ripped a nurse's shirt, pulled her pants down and attempted to pull her onto his bed while repeatedly telling her he would rape her, while he resided in a Colorado nursing home.

3. Incapacitated or wheelchair bound offenders are safe

Ivey Edwards and Mirl King were both in wheelchairs when they assaulted their victims.

Samuel Irving was a 43 year old, reportedly with five drug, weapons, and robbery arrests on his record when he confessed to raping and beating a 78 year old Brooklyn nursing home resident. The victim was unconscious and bleeding from the mouth. Later she was admitted to the Intensive Care Unit at a local NY hospital. Irving was also a bilateral amputee whose legs were amputated below his knees.

4. Child molesters are safe around old people

Kind and Edwards both had counts of molesting children.

So did John Enos, a 68 year old with reported history of rape and abuse of a child, indecent assaults, and sexual battery on a child under 14 years of age. Enos sexually assaulted his 90 year-old male roommate, The roommate was a Merchant Marine during World War II, during which a German U-boat sank his ship and later worked for the Massachusetts Department of Corrections for 40 years.

Bryan Barefoot was convicted on two counts of lewd molestation. Prior to his conviction, a state competency evaluation noted, "it is the opinion of this examiner that the defendant would pose a significant threat to the safety of others if released. The defendant's behavior that constitutes a threat towards others could continue, despite any treatment, therapy, or training."

Barefoot was ordered by a judge upon conviction to live in an Oklahoma Intermediate Care Facility for the Mentally Retarded, despite the rules and conditions for supervised probation which ordered him to "stay away from children under the age of 18 years." So why then send him to a facility with adults, with the mental acuity of less than an 18 year old?

Barefoot was later sent to prison after it was reported to have "promiscuous sexual behavior (he usually chooses young low functioning females who cannot talk well enough to tell on him)" and "he initiated a group session of sexual interaction with several males and one of the lower functioning females."

5. You only need to worry about sex offenders

Samuel Irving was not a convicted sex offender before his assault on his fellow New York nursing home resident.

Billy Ray McDaniel had convictions for unauthorized use of a motor vehicle, larceny, and burglary. At 65 years of age, McDaniel was discovered sexually battering an 89 year old female nursing home resident in Oklahoma City.

Ronald Leddy, a 43 year old with a criminal history of robbery, stolen cars, possession of a pistol, and assaults to commit a felony, was charged with murder and rape in a Rhode Island assisted living facility. He is still pending trial, but

reportedly stabbed a fellow female resident to death and raped the only employee on duty in the facility at the time, a housekeeper.

"Uncle Pat," *Patrick Wilhoite*, had never been caught or convicted of molesting children. His crimes were for larceny, until he sexually assaulted a 3 year-old little girl while she was visiting her great-grandfather in a Richard, Texas nursing home.

6. Nursing homes are capable to handle these offenders

In A Perfect Cause's Predators in America's Nursing Homes 2004 report, the majority of nursing homes had more cited deficiencies than the national average.

In the 277 nursing homes housing registered sex offenders, 156 were cited for neglect and abuse. There were also 110 citations for failure to "give professional services" and "services to keep the highest quality of life possible." Failure to "make sure each resident is being watched" was cited 59 times.

87.6% of the facilities documented less than the national average of 0.7 hours per resident per day. Twelve nursing homes had less than 20% of the national RN staffing hours. 80% failed to meet the national average of total care hours per day.

As well, the number of rapes, assaults, and murders clearly document standard nursing facilities are not capable of providing long-term care for criminal offenders.

7. Prior offenses were minor or they happened long ago

Again, this is clearly not the case.

Excuses that many elderly offenders were simply urinating in public when caught and forced to register defies common sense. Most states did not enact registration laws until the 90's or early 2000's, while exempting offenders who were out of the criminal justice system at that point. In this case, offenders would need to be under 40 years of age to meet that argument.

As well, consider A Perfect Cause's 2005 study.

<b>Years Since Conviction</b>				
<b>Range</b>	<b>#</b>	<b>%</b>	<b>Running Total / %</b>	
0 - 4	41	13.4%	41	13.4%
5 - 9	97	31.8%	138	45.2%
10 - 14	95	31.1%	233	76.4%
15 - 19	41	13.4%	274	89.8%
20 - 29	27	8.9%	301	98.7%
30 - 39	2	0.7%	303	99.3%
40 - 49	1	0.3%	304	99.7%
50 - 59	1	0.3%	305	100.0%
Totals	305	100.0%		

\* Only 305 Out of 800 Records Obtained Documented Conviction Dates and Ages

76% were convicted within the past 14 years.

8. Offenders have paid their debt to society

One can question if an offender can ever repay their debt to society. Many victims and / or their families would question if an offender could ever repay the loss caused by rape, assault, or murder.

However, consider the cases of Bryan Barefoot, Billy Ray McDaniel, Sebastian Dipasquale, and others. They were not sent to prison, instead they were sentenced to long-term care facilities.

#### 9. It's not rape, it's consensual sex

What is consensual sex? The term is often used by long-term care facility staff and operators to circumvent reports of rape and sexual assault to state regulators and law enforcement officials. Even law enforcement officers and prosecutors have used this excuse.

The former District Attorney of Oklahoma County dropped charges against a 40 year old who was arrested for raping a 77 year-old resident suffering from Alzheimer's disease.

A statement released by the former District Attorney's Office stated, "after the matter was investigated by the police, it was found that the alleged victim had the ability to consent and did consent to the sexual activity. Yet, the police report clearly stated the victim *"was of unsound mind and that her doctor diagnosed her with Alzheimers Disease with dementia and most of the time the VI (victim) would not be in her right mind."*

*In a U.S. Department of Justice sponsored conference on Sex Offender Management and Re-Entry, sexually abusive behavior was defined as"*

Any sexual interaction between person(s) of any age that is perpetrated:

- Against the victim's will
- Without consent, or
- In an aggressive, exploitative, manipulative, or threatening manner

Consent was defined as:

- Understanding what is proposed
- Knowledge of societal standards for what is proposed
- Awareness of potential consequences and alternatives
- Assumption that the agreement or disagreement will be respected equally
- Voluntary decision
- Mental competence

A violation of resident rights?

According to the Code of Federal Regulations, Title 42, Subpart B Requirements for Long Term Care Facilities, Part 483.15 Quality of life – A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(e) Accommodation of needs. A resident has the right to - (1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(f) Activities. – (1) The facility must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.

(h) Environment. The facility must provide - (1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible

Warehousing predators in nursing homes appears to violate these regulations.

What can we do?

We can create federal and state legislation / rules. Appropriate and swift action is required as far too many long-term care residents are in harm's way.

Our recommendations include"

1. Establish separate and secure long-term care facilities for violent and sexual offenders – Use Oklahoma's Legislative Model The Sex Offenders Long Term Care Facility Bill – House Bill 2704
  - A. Security for the residents, staff, visitors, and neighbors
    - \* Resident rooms, common areas, entrances, and grounds
  - B. Video and radio frequency monitoring systems
  - C. Onsite security personnel
  - D. Basic state or federal correctional training, for all staff
  - E. Recognizing and defusing potential risk-situation training, for all staff
  - F. Identify physical and psycho-social needs, concerns for special residents
  - G. Social services / activities programs
  - H. Offender Management & Re-Entry Program
  - I. Screening and evaluating care / security staff
  - J. Motivating and counseling staff
  - K. Acceptable furlough policies
  - L. Acceptable standards of care practices

A separate and secure facility also serves the needs of offenders and their families.

With area restrictions for registered sex offenders, designated facilities offer simple and effective solutions when making decisions about long-term care needs.

The above recommendations also offer care and services that fit the psycho-social needs of offenders, over basic warehousing with disabled and elderly residents. This recommendation is all about Appropriate Resident Care.

2. Require criminal background checks for all residents

This will screen the offenders from non-offenders. Consider apartment complexes that require not only credit checks, but criminal background checks as well. These complexes wish to keep undesirable tenants out, while protecting the peace and safety of other residents.

Further, these apartment complexes provide a key to their residents to locks on their doors, and these residents allow whomever they choose to come and go as they please. In a nursing home, the residents do not receive a key. Their doors are open 24 hours a day, seven days a week, to whoever is in the facility.

3. Post conspicuous notification if offenders are residing in facilities
4. Make it mandatory for facilities and state agencies to immediately report all criminal acts and suspected criminal acts to law enforcement, while maintaining the possible crime scene
5. Track all criminal acts in long-term care facilities and the assailants who commit these acts
6. Implement policies for video monitoring in facilities and on an opt in basis, residents' rooms
7. Establish policies to deal with consensual sex

Predators in long-term care are bad for business.

While there are those operators who knowingly and in some cases actively solicit criminal offenders for their facilities, the results can have disastrous consequences. Other operators may feel pressured by court orders, local sheriffs, state agencies, and possible discrimination suits by former offenders.

When residents, staff, or visitors are raped, assaulted, or murdered by criminal offenders residing in facilities; operators face likely litigation. Legal expenses, time, and increased insurance premiums take a toll on profitability.

Staff morale and turn-over are factors. Poor morale results in poor performance, resulting in poor care in facilities which can produce fines and / or litigation. Turn-over is expensive in advertising, recruiting, screening applicants, and training all affect the bottom line.

Many families, knowing offenders are residing in the long-term care facility will often choose alternate arrangements. As a result, the operator loses another client.

Yes, predators in long term care facilities are definitively bad for business.

When you put predators in with the prey, somebody's going to get bit.

It is not a question of "If" a criminal act will occur. That question, unfortunately, has already been answered several times over. The only questions that remain until we resolve this issue are Who's next? And when?

In Leviticus, God commands us to stand for our elders. The next time you stand up, please think of God's commandment, our disabled citizens and our elders who are in harm's way.

No one should be left behind.