



PROTECTION AND CARE OF VULNERABLE IOWANS:

WHAT DID THE LEGISLATURE DO AND WHAT CAN THE COURTS DO?

Josephine Gittler

Wiley B. Rutledge Professor of Law

University of Iowa College of Law

Iowa Judicial Branch Fall CLE

Des Moines, Iowa

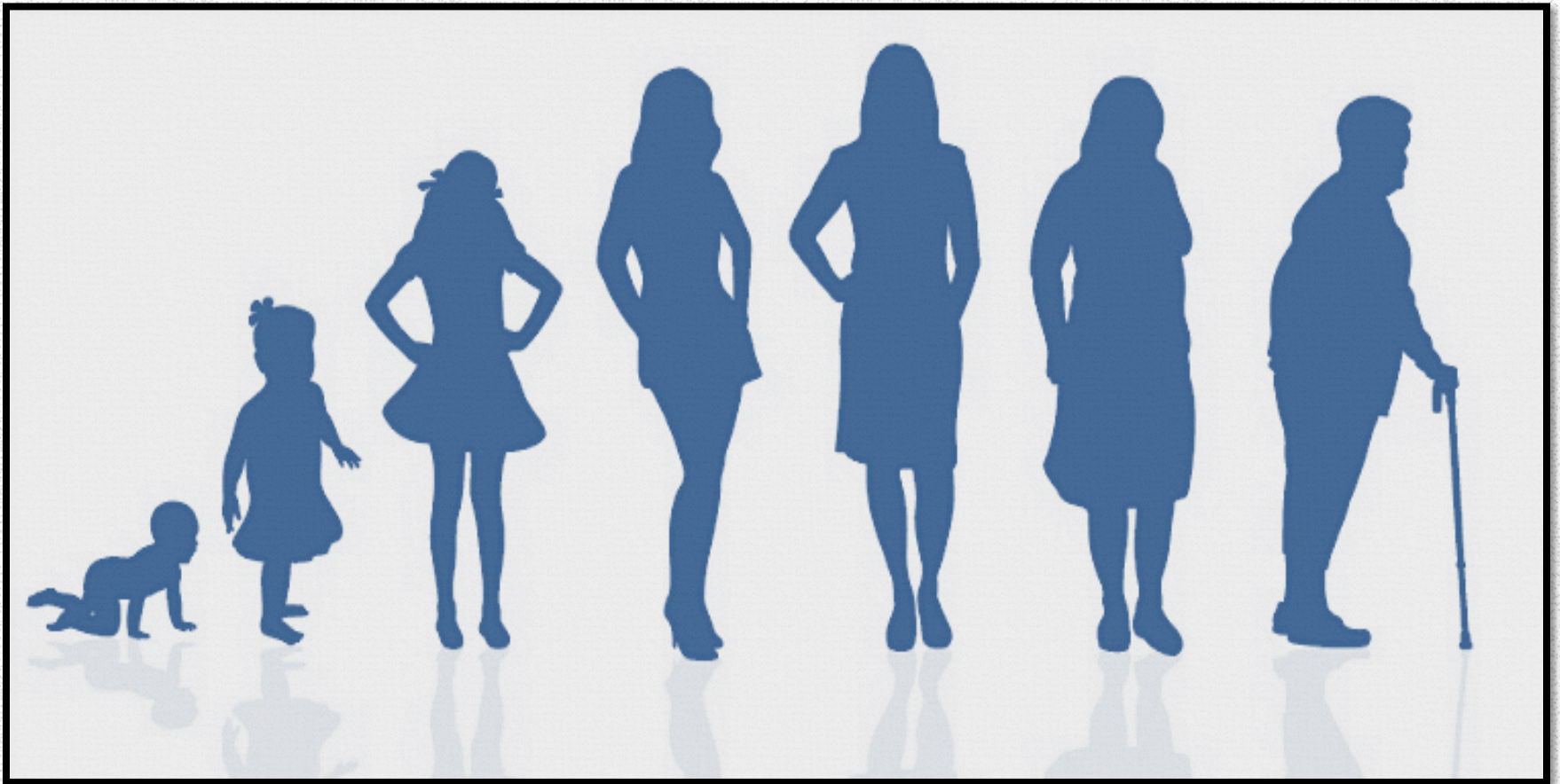
November 7, 2014

ROADMAP

- Background
 - The aging population
 - Older persons and diminished capacity
 - Elder abuse
- Iowa Uniform Power of Attorney Act – Iowa Code Ch. 633B
- Elder Abuse Relief – Iowa Code Ch. 235F
- Iowa Guardianship and Conservatorship System: Future Directions
- Questions and Comments

BACKGROUND

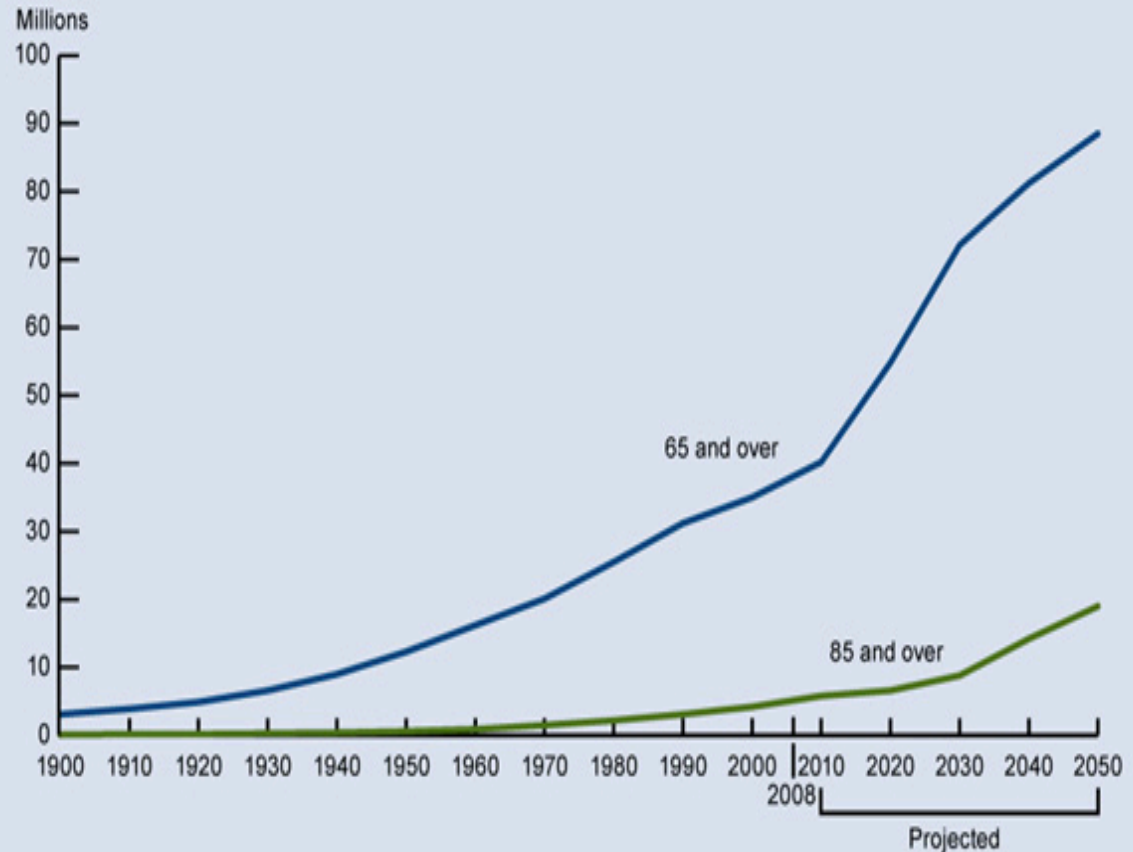
Growth in the Aging Population



The Aging Population in the U.S.

It is projected that from 2010 to 2050, the number of Americans in this age group will more than double, from 40.2 million or 13% of the total population, to 88.5 million or 20.2% of the population

Population age 65 and over and age 85 and over, selected years 1900–2008 and projected 2010–2050



NOTE: Data for 2010–2050 are projections of the population.
Reference population: These data refer to the resident population.
SOURCE: U.S. Census Bureau, Decennial Census, Population Estimates and Projections.

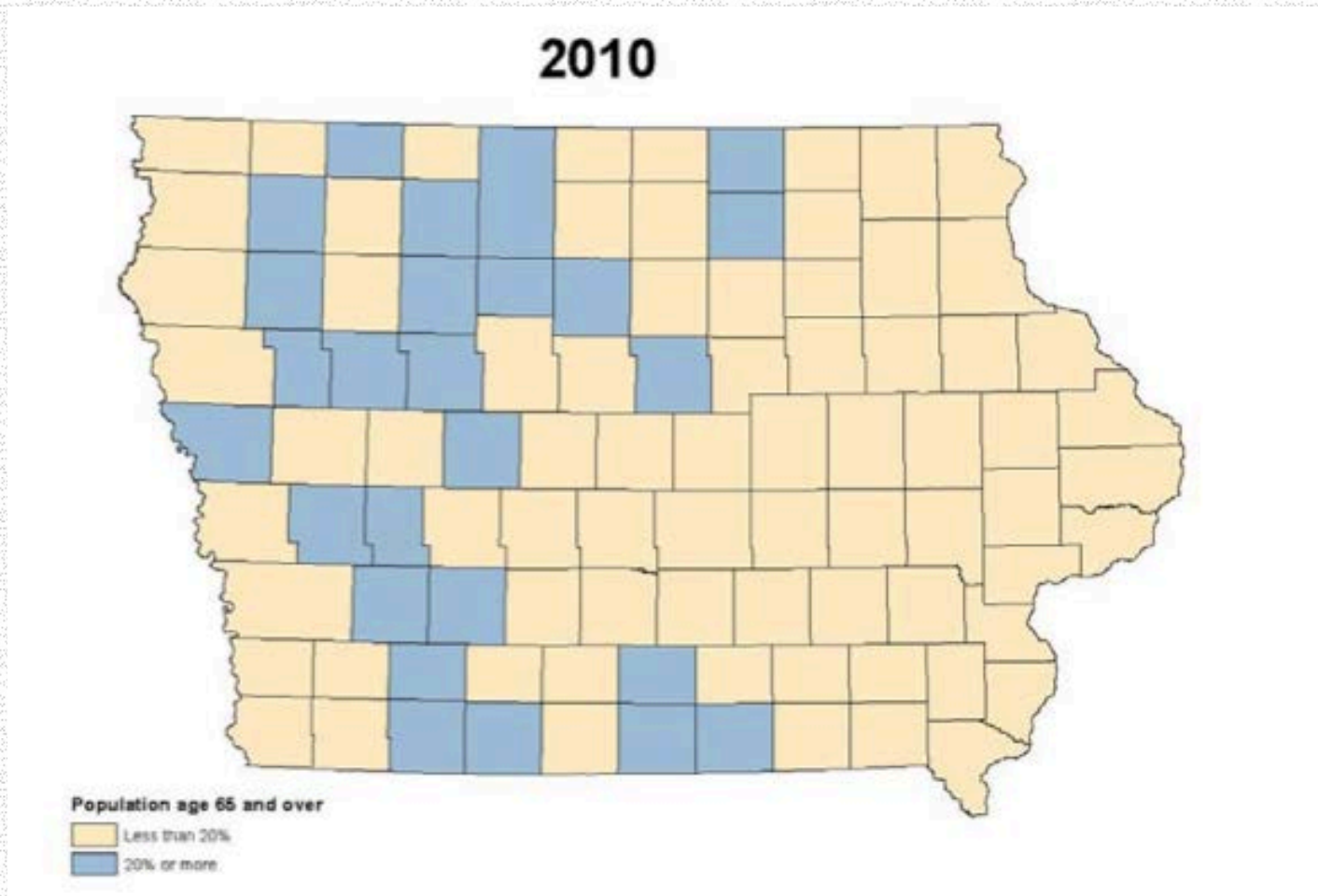
The Aging Population in Iowa

Among States:

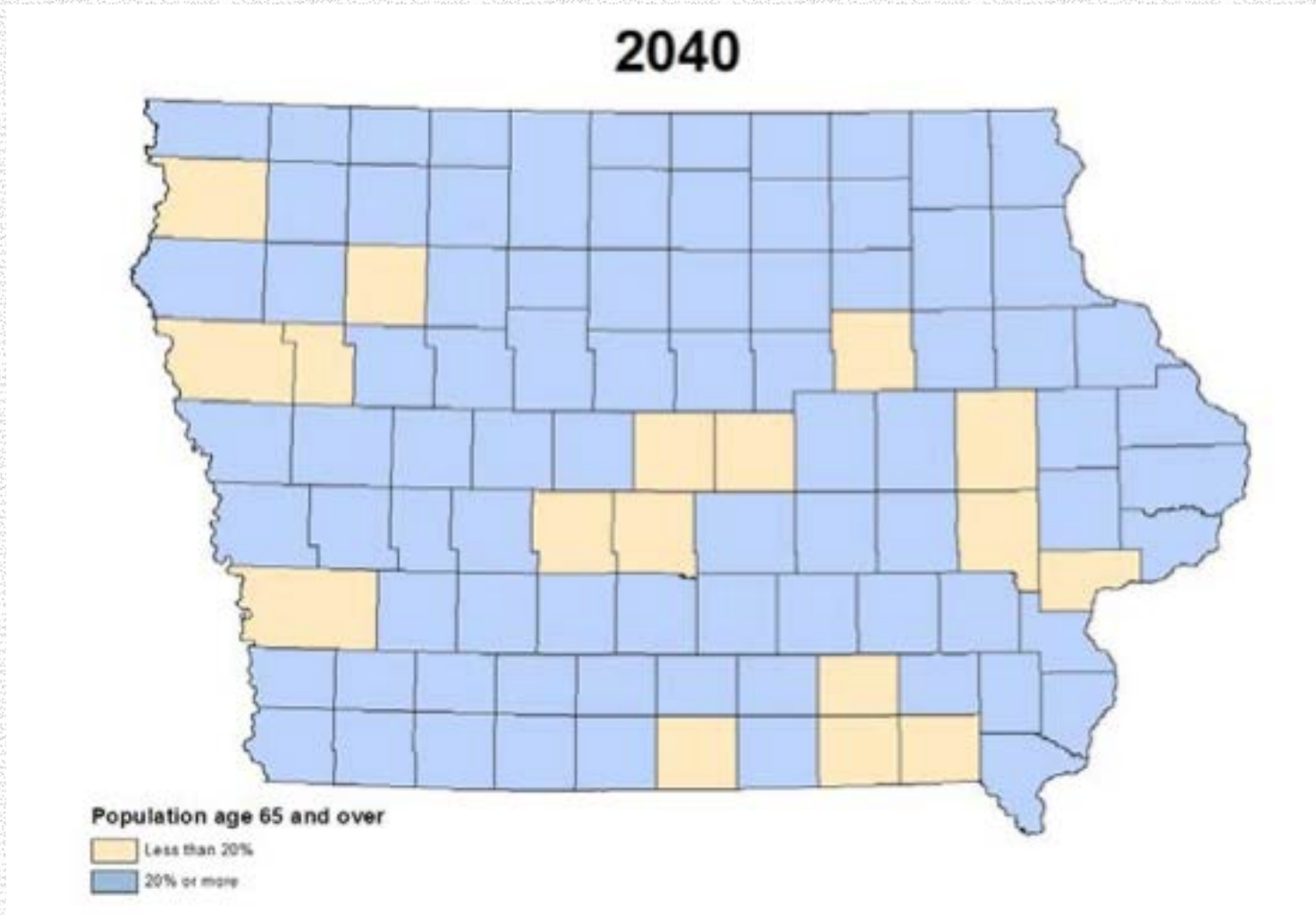
IA ranks 6th in population 65+

IA ranks 3rd in population 85+

The Aging Population in Iowa by County



The Aging Population in Iowa by County



Increasing Life Expectancy

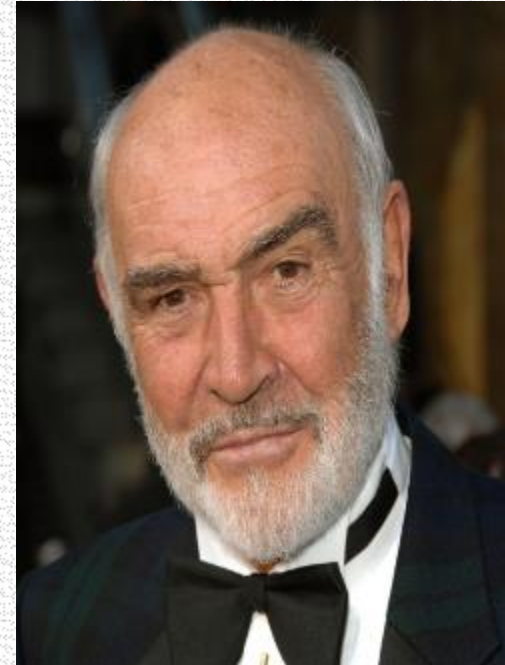
1900

47.3 years



2009

78.02 years

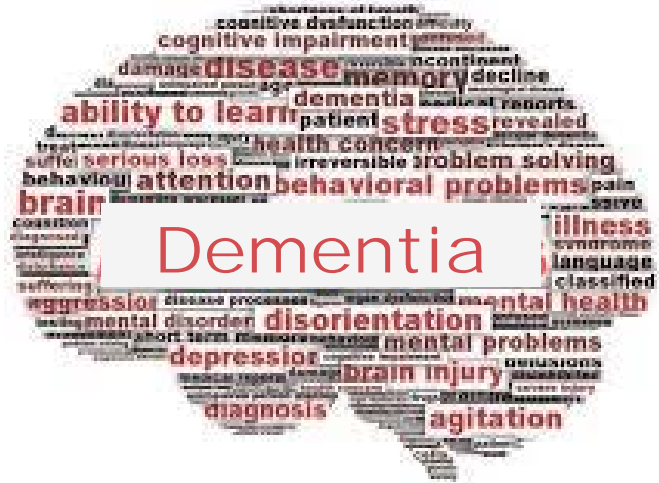
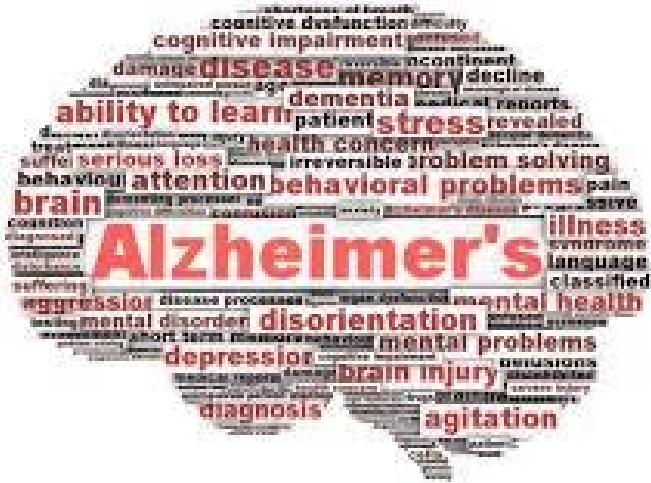


Baby Boomers are Aging

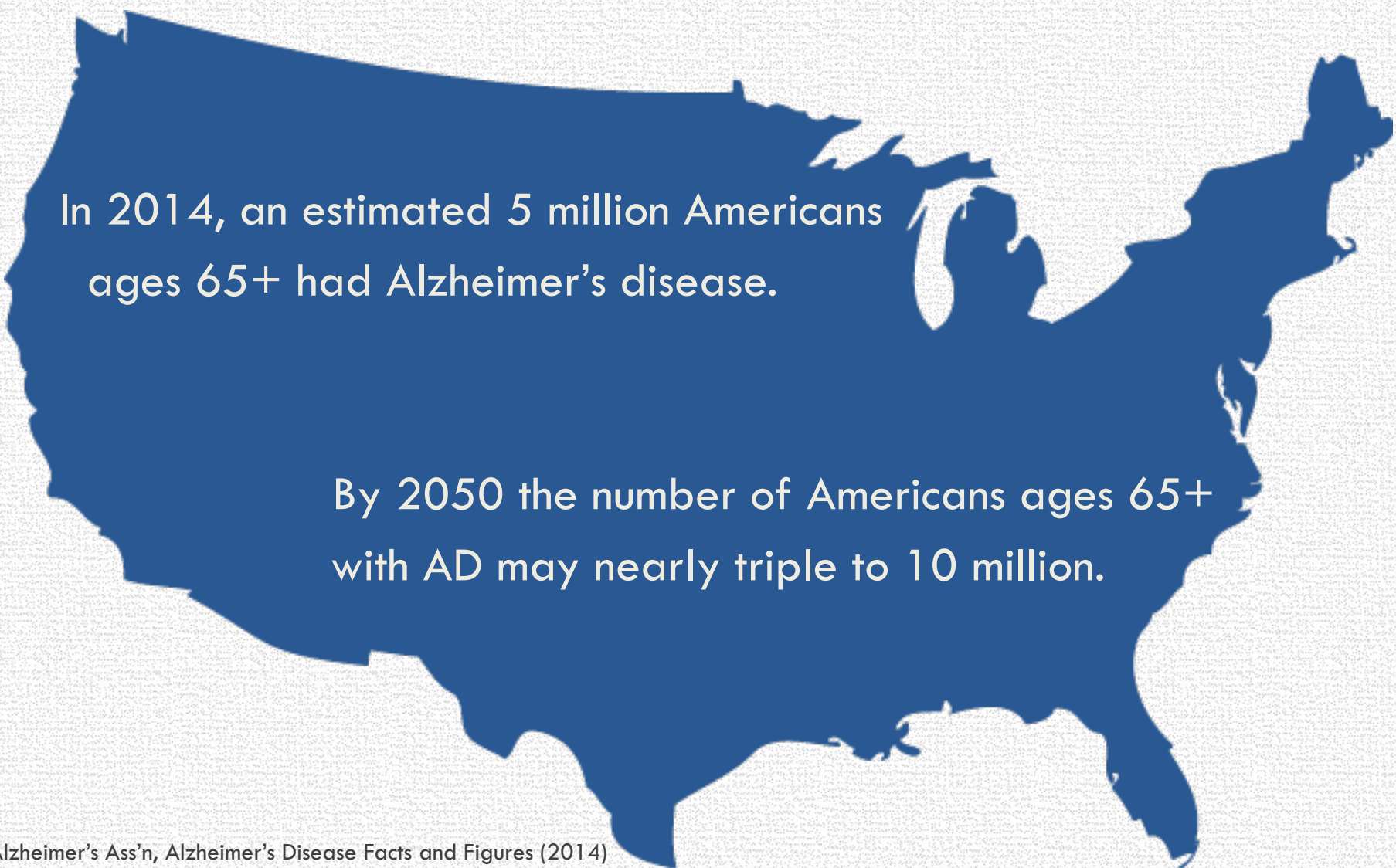
77.3 million baby
boomers started
turning 65 in 2011



Older Persons and Diminished Capacity



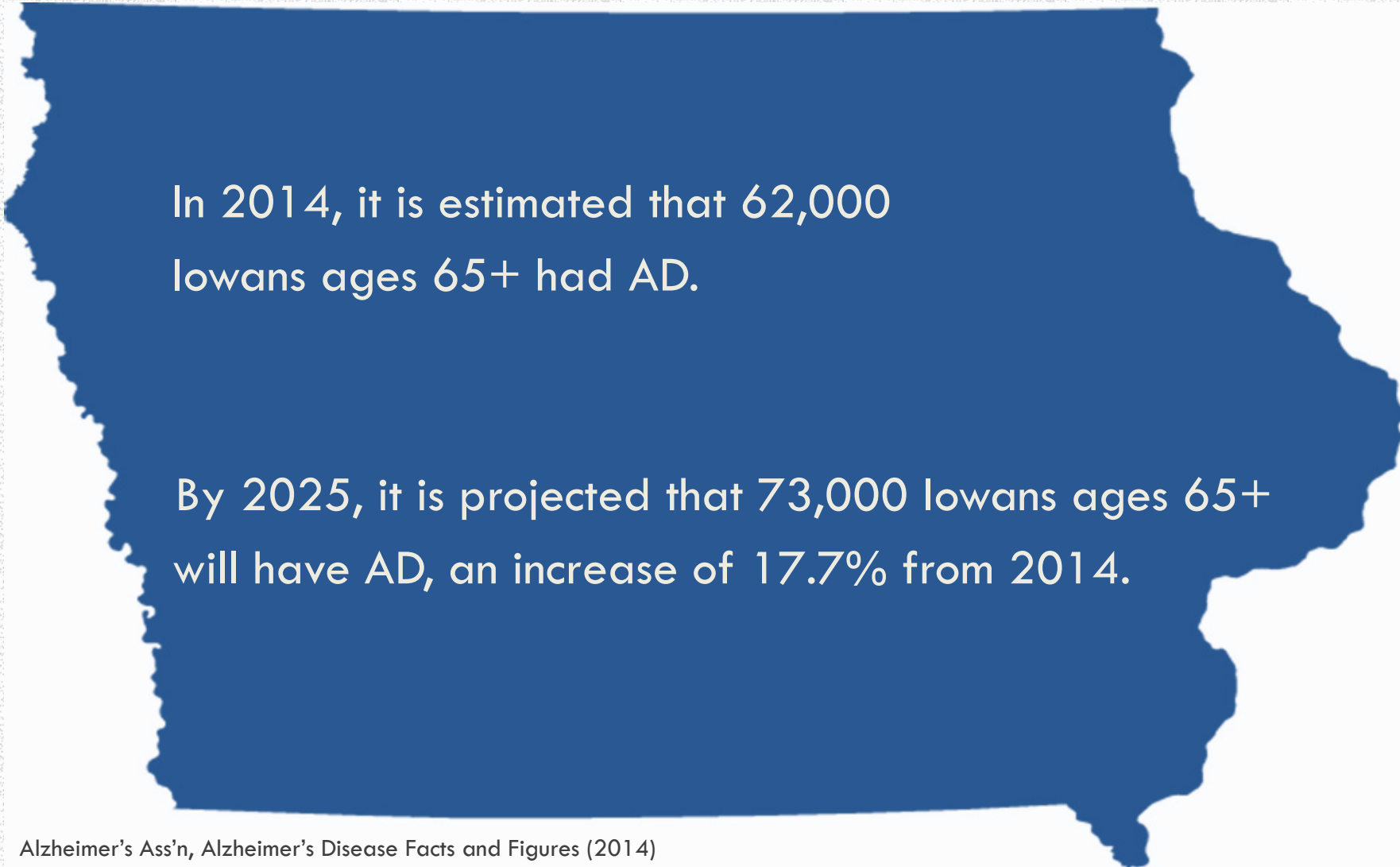
Alzheimer's Disease (AD) in the U.S.



In 2014, an estimated 5 million Americans ages 65+ had Alzheimer's disease.

By 2050 the number of Americans ages 65+ with AD may nearly triple to 10 million.

Alzheimer's Disease (AD) in Iowa



In 2014, it is estimated that 62,000 Iowans ages 65+ had AD.

By 2025, it is projected that 73,000 Iowans ages 65+ will have AD, an increase of 17.7% from 2014.

Risk of Alzheimer's Disease (AD) & Other Dementias

- The population of the “oldest old” – those age 85+ – is the fastest growing segment of the aging population.
- The “oldest old” are at highest risk for AD and other dementias.
- It is projected that by 2050 the “oldest old” will account for half of all older persons with AD.

Elder Abuse



Elder Abuse: Definition

- Elder abuse is:
 - physical, sexual, or psychological abuse, as well as neglect, abandonment, and financial exploitation of an older person by another person or entity,
 - that occurs in any setting (e.g., home community, or facility)
 - either in a relationship where there is an expectation of trust and/or when an older person is targeted based on age or disability.

Elder Abuse: The Problem

- The true prevalence and incidence of elder abuse is unknown.
- Regardless of a lack of finite data, it is clear that elder abuse is a serious problem.



Elder Abuse: The Problem

- Existing data indicate that:
 - One out of every ten people ages 60 and older who live at home suffers abuse, neglect, or exploitation.
 - About half of people with dementia suffered from abuse or neglect by their caregivers.
 - Cognitive impairment reduces financial capacity, increasing risk of financial exploitation.
 - High rates of neglect, poor care or preventable adverse events persist in nursing homes and other long-term care settings where more than two million people (most of them elderly) live.

IOWA UNIFORM POWER OF ATTORNEY (POA) ACT

Iowa Code, Chapter 633B

Resource Materials:

- The Iowa Uniform Power of Attorney Act is included in Resource Materials at the **GREEN** divider



Overview

- The Iowa Uniform Power of Attorney Act:
 - Establishes a comprehensive legal framework for creation and use of POAs.
 - Furnishes guidance to and protections for principals, agents and third parties.

Overview

- Purpose of Act:
 - To enhance effectiveness of POAs as vehicles for incapacity planning and avoidance of conservatorship, and
 - To prevent, identify and redress “POA abuse”.

Judicial Review:

- [§633B.116]
- Provision lists individuals who may petition court to construe a POA or to review an agent's conduct.

Judicial Review:

- [§ 633B.116]
- The listed individuals are:
 - Principal
 - Agent
 - Principal's guardian or conservator
 - Individual authorized to make health care decisions for principal
 - Principal relatives (spouse, parents, descendant, or presumptive heir)
 - Governmental agency with authority to protect principal's welfare
 - Principal's caregiver
 - Individual asked to accept POA or designated in a POA

Judicial Review:

- [§ 633B.116]
- *AND*
 - Anyone who can demonstrate sufficient interest in the principal's welfare

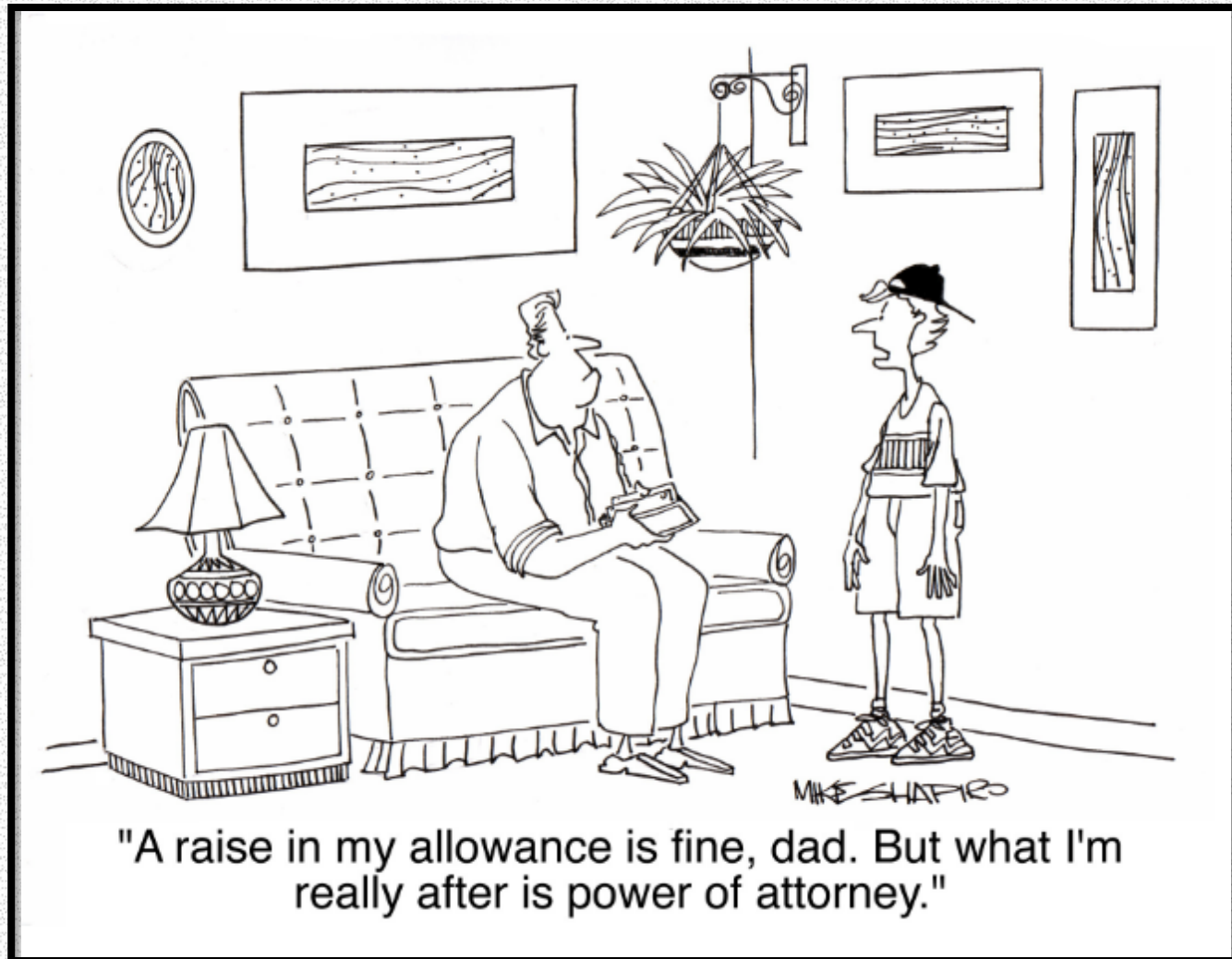
Provisions with Special Relevance for Judicial Review:

- [§§ 633B.114-115, 633B.117]
- Agent's Duties and Liability
- [§ §633B.201-633B.217]
- Agent's Authority

Other Provisions:

- For description of other provisions of the POA Act, see:
 - The Uniform Power of Attorney Act: Overview and Summary by Josephine Gittler in Resource Materials at the **PEACH** divider

Cartoon Break!



ELDER ABUSE ACT

Iowa Code, Chapter 235F

Resource Materials:

- The Elder Abuse Act is included in Resource Materials at the **PURPLE** divider.



What is Elder Abuse?

- [§ 235F.1(5)(a)]
- Elder abuse is:
 - Physical injury
 - Unreasonable confinement
 - Unreasonable punishment
 - Assault
 - Commission of a sexual offense under 709 or 726.2
 - Neglect
 - Financial exploitation

What is not Elder Abuse?

- [§ 235F.1(5)(b)]
- Elder Abuse is not:
 - Vulnerable elder's decline of medical treatment under specified circumstances related to his/her beliefs or religious tenants and practices.
 - Caretaker decline of medical treatment for vulnerable elder with his/her consent under such circumstances;
 - Withholding or withdrawing of health care from terminally ill vulnerable elder under specified circumstances.

What is Financial Exploitation?

- [§ 235F.1(8)]
- Financial exploitation is:
 - “when a person stands in a position of trust trust or confidence with the vulnerable elder and knowingly and by undue influence, deception, coercion, fraud, or extortion, obtains control over or otherwise uses or diverts the benefits, property, resources, belongings, or assets of the vulnerable elder.”

What is Financial Exploitation?

- [§ 235F.1(14)]
- Stands in a position of trust or confidence means: “a parent, spouse, adult child, or other relative by consanguinity or affinity of the vulnerable elder, a caretaker for the vulnerable elder, and a person who is in a confidential relationship with the vulnerable elder.”

What is not financial exploitation?

- [§ 235F.1(14)]
- Confidential relationship does not include:
 - A legal fiduciary,
 - An ordinary commercial or transactional relationship the vulnerable elder may have with a bank, savings and loan association, savings bank, or credit union incorporated/organized under state or federal law, or
 - An agent, agency or company regulated under chapter 505, 508, 515, or 543B.

Who is a Vulnerable Elder?

- [§235F.1(17)]
- A vulnerable elder is:
 - A person age 60+
 - Unable to protect self from elder abuse
 - as a result of age, mental or physical condition

How is an Action Commenced?

- [§ 235F.2]
- An action is commenced by filing of a verified petition in district court seeking relief from elder abuse.
- Petition must contain specified information.

Who Can File a Petition?

- [§§ 235F.2(1), &235F.1(15)(17)]
- Vulnerable elder
- Substitute petitioner including vulnerable elder's:
 - Family or household members
 - Guardian or conservator
 - Attorney in fact (agent under POA)
 - Guardian ad litem, or
 - Other interested party



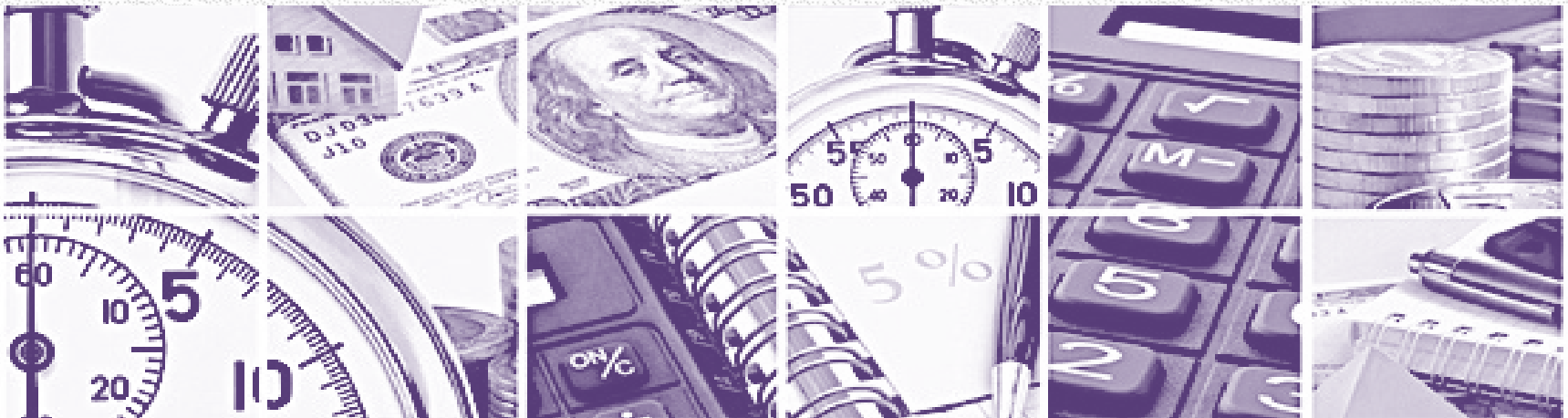
Forms for Pro Se Petitioners:

- IA judicial branch shall proscribe exclusive standard forms for use of pro se petitioners as of 7/1/2015
- For forms and procedures prepared/used in: Blackhawk, Linn, Polk, Pottawattamie Counties and 7th Judicial District, see: Resource Materials at **YELLOW**, **RED**, **BLUE**, **PINK** and **GOLD** dividers



Notice, Court Costs and Fees

- For summary of provisions and procedures for clerk's noticing and court costs and fees, see:
 - “Procedures for Elder Abuse” in Resource Materials at the **GOLD** divider.



Appointment of Guardian Ad Litem (GAL)

- [§234F.4]
- Court on its own motion may appoint GAL for a vulnerable elder “if interests of justice require”
- Attorney for vulnerable elder may not serve as GAL



Hearing:

- [§ 235F.5]
- After commencement of proceedings and required notice, required timeframe for hearing is 5-15 days.
- Plaintiff has burden of proof by a preponderance of evidence.
- Upon application of party, court may subpoena witnesses and production of papers.
- Requisite showing of elder abuse may be based on testimony from vulnerable elder and other persons.
- Court has discretion to protect vulnerable elder from “traumatic confrontation with defendant.”
- Hearing must be recorded.

Types of Orders:

- [§ 235F.2, 235F.5, § 235F.6, § 235F.7]
- Emergency Order
- Temporary Order
- Final Order

Emergency Order:

- [§ 235F.7]
- Petition for order may be filed at night or on weekend before district judge or associate district judge designated by chief judge.
- Court may enter any order necessary to protect vulnerable elder upon good cause shown in ex parte proceeding.
- Present danger = good cause shown.
- Order may be based on showing of prima facie case of elder abuse.
- Order is good for 72 hours.
- Upon expiration, plaintiff may seek temporary order.
- A filed petition and issued emergency order must be certified to court and commences action.

Temporary Order:

- [§ §235F.5, 235F.6]
- Court may enter any order necessary to protect vulnerable elder upon good cause shown in ex parte proceeding.
- Present danger = good cause shown.
- Order may be based on showing of prima facie case of elder abuse.

Disposition:

- Court has broad dispositional powers
- Court can order:
 - Certain specified forms of relief,
 - Relief “necessary to prevent or remedy the financial exploitation” of Vulnerable Elder, and
 - other relief “necessary... for the safety and welfare” of Vulnerable Elder.

Court Can Order:

- Defendant to move from vulnerable elder's residence,
- Defendant to provide alternative housing for vulnerable elder,
- Peace officer to accompany party removing personal effects from residence,
- Defendant not to abuse, harass, intimidate, molest, interfere with or menace the vulnerable elder or attempt to do so,
- Defendant not to enter or attempt to enter any premise if such restraint is necessary to prevent defendant from abusing, intimidating, molesting, interfering with or menacing the vulnerable elder, and
- Defendant not to exercise any powers on behalf of vulnerable elder through guardian, conservator, GAL, attorney in fact (agent), or another third party.

Relief to Prevent Financial Exploitation Includes:

- Directing defendant not to exercise control over real or personal property, assets or benefits of the vulnerable elder.
- Requiring defendant to return custody or control of the foregoing to the vulnerable elder,
- Prohibiting the defendant from transferring the foregoing to someone other than the vulnerable elder, and
- Requiring the defendant to follow instructions of the guardian, conservator, GAL, attorney in fact (agent) or another third party.

Court Cannot Issue Order:

- Allowing person other than the vulnerable elder to assume control over the vulnerable elder's funds, benefits, property, resources, belongings or assets, and
- Providing relief more appropriately obtained in a Chapter 633 protective order.

Consent Agreement:

- [§235F.6]
- Court may approve consent agreement between parties.
- Approved agreement may not:
 - Prohibit party from contacting or cooperating with any government agency or contacting defendant's current employer if criteria for such contact met,
 - Prohibit party from filing a complaint with or reporting law violation to any government agency or defendant's current employer,
 - Require party to withdraw complaint or report to any government agency or defendant's current employer.

Other Provisions Re Orders and Approved Consent Agreements

- [§ 235F.6(5)(6)&(8)]
- An order, or approved consent agreement, shall be for a fixed time period not exceeding 1 year, but may be extended or extended under specified circumstances.
- Order shall state whether a person is to be taken into custody by peace officer for violation of order.
- Order or approved consent order, shall not affect title to real property.

Comparison of Chapter 235F & 236

- 235F: Elder Abuse Protective Orders
- 236: Domestic Abuse Protective Orders

IOWA GUARDIANSHIP AND CONSERVATORSHIP SYSTEM

Future Directions

Iowa Guardianship/Conservatorship Assistance and Monitoring Project

- Purpose
 - To assure that incapacitated persons receive proper care and protection from abuse, neglect and financial exploitation



Iowa Guardianship/Conservatorship Assistance and Monitoring Project: Components

To assist courts to carry out the ongoing monitoring of guardianships and conservatorships.



To assist guardians & conservators to fulfill their duties and responsibilities to wards.

need help?

Iowa Guardianship/Conservatorship Assistance and Monitoring Project

Administration

NHLP

National Health Law and Policy Resource Center

Funding



Data Collection & Analysis



A Review of guardianship/conservatorship files in five judicial districts is being conducted by the National Health Law and Policy Resource Center at the University of Iowa College of Law.

Questions or Comments?



Thank You

Josephine Gittler

Wiley B. Rutledge

Professor of Law

412 Boyd Law Building

University of Iowa College of Law

Iowa City, IA 52245

(319) 335-9046

josephine-gittler@uiowa.edu

A large, stylized, blue cursive graphic that reads "Thank You". The text is written in a flowing, elegant script with prominent loops and flourishes, particularly on the 'T' and 'Y'. The color is a solid blue, and the background is white.