OREGON DEPARTMENT OF JUSTICE

2019

Elder Abuse

A Pocket Guide for Law Enforcement

Attorney General Ellen F. Rosenblum

Welcome

Fighting elder abuse has been a priority for me since becoming Oregon's Attorney General in 2012. Since then, I have worked hard to prevent and address the abuse of older Oregonians. I created a team within the Criminal Justice Division that provides training, technical assistance and legal expertise to prosecutors, law enforcement and others who work with older Oregonians.

I know that well-informed law enforcement professionals can recognize elder abuse and adequately assess legal issues. You play a key role in stopping elder abuse; listening to victims, protecting victims by linking them to adult protective services or other critical services; separating offenders and victims; and holding perpetrators accountable.

To help you fulfill these important roles, our team has created this pocket guide. This 10-page, laminated guide is small enough to carry with other equipment or attach to the visor of your patrol car. In addition to practical tips to aid you in the investigation of elder abuse, the Pocket Guide also provides brief explanations of:

- Documents and tools that may be misused to commit elder abuse.
- Legal concepts that may be used properly to remedy elder abuse.
- Issues and actions that law enforcement professionals should consider if they suspect that elder abuse has occurred.

It is my hope that you will use this Pocket Guide to fight the growing epidemic of elder abuse in our state and work with our team and your local District Attorneys to hold perpetrators of elder abuse accountable.

Sincerely,
Oregon Attorney General Ellen Rosenblum

Physical & Sexual Abuse

Possible Indicators

- Bruises, black eyes, welts, lacerations, bite and ligature marks
- Broken bones, burns, open wounds, untreated injuries in various stages of healing
- Bruising or other injury to breasts, thighs and genital area
- Hair pulled out
- Unexplained venereal disease or genital infections
- Unexplained vaginal or anal bleeding
- Torn, stained or bloody underclothing
- Broken eyeglasses or other missing essential equipment (i.e. a hearing aid, walker, wheelchair, oxygen, etc.)
- Physical signs of being "punished" or restrained
- Over or under medicating
- Sudden change in victim's behavior (i.e. nervous around caregiver)
- Victim does not have access to communication devices (i.e. phone, computer, tablet, etc.)
- Locks on interior doors, restraints, etc.

Possible Crimes

163.205 Criminal Mistreatment I-II, 163.160 Assault I-IV (Domestic Violence), 163.195 Reckless Endangering, 163.187 Strangulation, 163.190 Menacing, 163.275 Coercion, 165.572 Interference with making a Report, 166.065 Harassment, 163.375 Rape I, 163.427 Sex Abuse I-III

Neglect

Possible Indicators

- Lack of medical attention, untreated health problems, missed medical appointments
- Dehydration and/or malnutrition
- Poor personal hygiene (Victim incapable of caring for self to the point of severe self-neglect)
- Unsafe/unsanitary living conditions (i.e. filth, lice, scabies, infestation, soiled bedding, fecal/urine smell, fire/trip hazards)
- Lack of clothing or inadequate clothing
- Inadequate housing
- Medications not available or not being administered correctly
- Wounds, open sores, and pressure injuries
- Bandages are inadequate and/or unsanitary
- Victim left alone for prolonged periods
- Victim does not have necessary equipment to function (i.e. walker, CPAP, hearing aids, oxygen, catheter, adult diapers, etc.)
- Stains on clothing, bedding, or belongings
- Other concerns of care provided (i.e. giving the victim alcohol/drugs, giving soda when diabetic)

Possible Crimes

163.205 Criminal Mistreatment I, II
163.145 Criminal Negligent Homicide

Financial Abuse

Possible Indicators

- Abrupt changes in the will
- Unauthorized or unexplained large withdrawals from accounts
- Inappropriate reimbursement for services for the victim
- Large purchases for the abuser's benefit
- Disappearance of funds/possessions
- Sudden transfer of assets to a family member or other person
- Victim added to the abuser's account, or accounts combined
- Signatures forged on checks and other documents
- Victim's bills left unpaid or delinquent by abuser
- Prior civil cases with victim or abuser (eCourts)
- Sudden appearance of previously uninvolved relatives claiming their rights to the victim's affairs and possessions
- Unemployed adults living in the home
- Persons unknown to victim (but known to caretaker) using the victim's account(s)
- Abuser discounting the opinion or voice of the victim, especially when power of attorney or other legal designation is held by the abuser

Possible Crimes

164.057 Aggravated Theft I (enhanced sentence 164.061), 164.055 Theft I, 164.075 Extortion, 165.800 Identity Theft, 165.007 Forgery I, 163.205 Criminal Mistreatment I.

Investigator Tip: Often victims of elder abuse are polyvictimized by abusers (i.e. the victim was being emotionally abused and was threatened physical harm if they did not sign over power of attorney so the abuser could have access to their bank accounts).

Evidence Considerations

Video and Photo Evidence

As required by statute, ensure that an effort is made to contact the victim and attempt to interview them. Whenever possible, video record the victim at the earliest stage of the investigation. The video will be invaluable if the victim dies, experiences severe illness, or mental decline prior to the resolution of the case. During the interview it is important to document:

- The victim's mental capacity/cognitive state (how the victim perceives time and place)
- The victim's consent, if any, or their inability to consent
- Victim signing their name to compare to signature(s) on questioned document(s)
- A neglect and/or abuse crime scene (video record a walk-thru with the victim if possible)

In addition to video, be sure to take photos from several angles at multiple ranges and write a precise and detailed report. If video is unavailable, ensure the interview is audio recorded.

Interview Evidence

Interview witnesses who can describe the victim's condition, activities, and level of functioning and interaction with the suspect before the incident and/or during the incident. Consider also interviewing those who may not have seen the victim interact with the suspect, but can describe changes in a victim over time, including family and friends, a waitress at their favorite restaurant, staff at the senior center, a postal carrier, a grocery store clerk, neighbors, hair stylists, bankers, etc.

Evidence Considerations

Financial and Legal Documents

- Power of Attorney documents
- Court/protection orders
- Wills and trusts
- Property deeds
- Conveyances
- Advanced care directives/living wills
- Guardianship/Conservatorship documents
- Bank records for both the suspect and victim
- Receipts
- Credit reports
- Credit card statements
- Investment account reports
- Checkbook registers
- Prior civil cases (eCourts)
- Utility and other household bills

Medical Documents

- Hospital records
- EMT/Paramedic reports
- Primary care physician
- Mental health clinician
- Dental records
- Pharmacy records
- Prescriptions
- Lab Reports
- X-rays
- Hospital social worker notes
- APS reports
- Nurses' notes
- Nursing facility records
- Home health care workers

Consider Consultation with Experts for Additional Evidence

- Handwriting analysts
- Geriatricians
- Forensic accountants
- Geriatric psychologists and psychiatrists
- Wound care experts
- Medical examiner
- Civil attorneys

Investigator Tip: Always obtain current and past APS and LE reports regarding the victim and the suspect.

Power of Attorney & Other Legal Designations

Acting as a Power of Attorney, Guardian or Conservator creates fiduciary duties to the older adult. These designations are **not a license to steal.**

Fiduciary Duty
A fiduciary duty exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another.

ORS 125.300-125.330 Guardianship
A guardian is appointed by the court to provide for the care of incapacitated protected person and has power over the protected person's property and assets, unless a conservator is appointed. Yearly reports to the court are required.

ORS 125.400-125.540 Conservators
A conservator is responsible for managing money or property of the financially incapable protected person. A conservator is appointed by the court and has a duty to the court to provide yearly accounting.

ORS 127.045 Power Of Attorney (POA)
A document that allows a person (Agent) to act on behalf of an older adult (Principal). POA documents can be for financial care and/or medical care. All decisions must be for the benefit of the principal; not the agent.

Challenges with Powers of Attorney

- No court involvement in the creation
- Not filed with the court
- No witnesses are required
- Generic forms can be found online, filled out and signed at home (possibly under coercion or by forgery)

Most Important
These designations (without limiting language) require by law that the benefit must **ALWAYS** be for the protected person.

Useful Statutes

ORS 124.060 Duty to Report
Mandatory report requirement for public or private official when suspected abuse is occurring to a person 65 years or older.

ORS 124.070 Duty to Investigate
Oregon Department of Human Services (DHS) or Law Enforcement (LE) shall investigate to determine nature and cause of abuse. Cross report requirement. Shall include a visit to the elderly person and communicate with witnesses.

ORS 124.072 Required Disclosure of Protected Health Info to LE
LE advises medical entity of elder abuse investigation. They can then provide records and statements.

ORS 192.603 Financial Institution Disclosure to LE
LE can request account info to assist in a criminal investigation for a period of 3 months prior and after the transaction that gave rise to the criminal investigation.

ORS 441.650 Investigation of Abuse Complaint
Requirement to investigate abuse complaints within long term care facilities (applies to LE and APS).

ORS 708A.675 Authority of Banks in Cases of Suspected Financial Exploitation
Banks can place a hold on transactions if they suspect elder abuse

ORS 124.005-124.040 Protection Order for Elderly Persons (EPPDAPA) *Available through Circuit Court

- Must be 65 years or older, or the guardian of an elderly person
- Abuse within last 180 days constituting physical injury or pain, neglect resulting in harm, abandonment, threats or calling the victim names, inappropriate sexual comments, sexual offenses or taking money or property from the victim.
- Continued threat of abuse- Victim must be in immediate and present danger of further abuse.

Elder Abuse Resources:

Oregon DOJ Elder Abuse Team
(503) 378-6347

Oregon DHS Adult Protective Services
(503) 945-5600 • justice.gov/elderjustice/law-enforcement-1

Oregon Long-Term Care Ombudsman
1 (800) 522-2602

Aging and Disability Resource Connection (ADRC)
1 (855) ORE-ADRC

For More Resources and Templates:
Oregon District Attorney Resource Network (ODARN)
daresource.oregon.gov

Reporting Abuse:

(Remember your requirement to cross report to APS)
Oregon DHS Abuse Hotline
(855) 503-7233

Reporting Fraud:

Oregon DOJ Consumer Hotline:
1 (877) 877-9392 or online at oregonconsumer.gov*

Nationwide Internet Crime Reporting FBI's IC3:
ic3.gov/default.aspx

Oregon DOJ Medicaid Fraud Unit
1 (888) 372-8301

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*Investigator Tip: When referring complainants to websites, ensure they have the resources and the ability to make the online report. If not, offer assistance with reporting.

To order more copies of this pocket guide contact DOJ Elder Abuse Team