

ELDER PROTECTION

I. WHAT'S GOING ON WITH THE PERSON/DEFENDANT?

An old man is at the grocery store daily for his lunch. He turns up one day with blackened eyes and tells the police officer that he fell down again.

The defendant's attorney says his elderly client only broke the window because his son had locked him out of the house as punishment for soiling his clothing at night.

The neighbor is tired of seeing her elderly neighbor without proper clothing in the cold weather and wants to help.

II. QUESTION PRESENTED:

If the police officer or attorney has reasonable belief that the elderly person is the victim of abuse, neglect or exploitation, or is in need of protective services, **they have a duty** to report this information to the County Department of Job and Family Services. The neighbor may, but is not required to make a report.

How are they to do this reporting?

III. RELEVANT STATUTES:

O.R.C. 5101.61: If an attorney or peace officer, clergy, counselor, or other human services person has reasonable cause to believe that an adult (60 or older) is being abused, neglected or exploited, such belief should be reported to the County Department of Job and Family Services.

Any person with reasonable cause to believe that an adult has suffered abuse, neglect, or exploitation MAY report or cause reports to be made to the County Department of Job and Family Services.

The report may be made orally, but the agency might require a written report. The report must state:

- Name address and approximate age of the adult; AND
- Name and address of the person responsible for the elder's care, if known, AND
- The nature and extent of abuse AND
- The basis upon which the reporting party believes the elder is being abused.

These reports are not public records. The accused, the elderly person and their counsel are entitled to see them.

O.R.C. 5101.60(D): The probate court in the county where the elderly person resides has jurisdiction in elder abuse and neglect matters.

O.R.C. 5101.62: The County Department of Job and Family Services then conducts an investigation of the report which includes face-to-face contact with the elder person, preferably at his/her residence, to determine if protective services are needed. The person

who made the report must also be interviewed, if feasible, as well as agencies and/or persons who may have information about the abused, neglect or exploitation.

O.R.C. 5101.63: If someone interferes with the investigation, the County Department of Job and Family Services may apply to the probate court for a restraining order against the offender. The restraining order may also permit a police officer to accompany the protective services representative to the elderly person's residence.

Note: The restraining order could be against the victim him/herself.

IV. EVIDENCE TO PROVE THE ELDERLY PERSON IS ABUSED:

The probate court must find by clear and convincing evidence that the elderly person:

1. Has been abused as defined by O.R.C. 5101.60(A), neglected as defined by O.R.C. 5101.60(K), or exploited as defined by O.R.C. 5101.60(G), AND
2. is in need of protective services (O.R.C. 5101.60(H)), AND
3. is incapacitated (O.R.C. 5101.60(I), AND
4. has no person available who can give legal consent to services under a protective services plan designed by the County Department of Job and Family Services.

V. PARTIES WHO MAY BE CALLED AT THE HEARING:

The persons who made the initial report to the County Department of Job and Family Services may be called to testify. The court has broad discretion to fashion remedies in accordance with law.

VI. PROTECTION FROM LIABILITY:

To enter another's residence is trespass. When police and protective services enter a residence with an order issued pursuant to this chapter, they are exempt from both criminal and civil liability under O.R.C. 5101.61(D).

This section also states that any person with reasonable cause to believe that an adult is suffering abuse, neglect, or exploitation who makes a report pursuant to this chapter or who testifies in any administrative or judicial proceeding arising from such a report, or any employee of the state or municipal subdivision who is discharging responsibilities under O.R.C. 5101.62 **shall be immune from civil or criminal liability on account of such investigation, report or testimony.** The only exception to this rule is for perjury, unless the person has acted in bad faith or with malicious purpose.

Employers may not retaliate against an employee for such participation.

ADULT PROTECTIVE SERVICES

Department of Senior and Adult Services
Reserve Square - Box 28
1701 East 12th Street
Cleveland, Ohio 44114-9752

Some elderly people
need protection.



1030 Euclid Avenue
Suite 318
Cleveland, Ohio 44115
621-8010

How to report...

All reports of suspected abuse should be made to the Department of Human Services in the county where the older person is located:

Cuyahoga County	431-4600
Geauga County	285-2222
Lake County	352-8963
Lorain County	323-5726
Medina County	723-3641

Every report will be kept confidential. Anonymous reports are accepted.

When making a report...

Identify the situation as an emergency if it is life threatening or if lasting damage is likely to result. Immediate action will be taken.

Every report will be investigated. Help will be given whenever possible.

Good faith reports have immunity from criminal and civil liability.

George was blind and depended on his daughter to get around. Jill considered her father demanding, and sometimes yelled at and hit him in anger.

What is elder abuse?

Elder abuse is the maltreatment of older persons. It may be intentional or not. Some forms are the result of action or inaction on the part of older persons themselves.

Elder abuse includes:

- Self-neglect
- Physical harm
- Neglect
- Violation of rights
- Financial exploitation
- Verbal abuse
- Unreasonable confinement

Most elder abuse is repeated and takes more than one form.

Margaret was too disabled to care for herself, but had no one who could help. As a result, over time she became malnourished and unkempt, her home in a state of disrepair.

- ◆ Adults age 18 - 59, where the primary problem is:
 - domestic violence.
 - mental illness (with the exception of dementia).
 - substance abuse.
 - homelessness/eviction.
- case active with the County Department of Children and Family Services, unless requested to do so by that Department.

Reports that are not accepted for investigation will be referred to appropriate resources.

**TO MAKE A REFERRAL TO
ADULT PROTECTIVE SERVICES**

MONDAY - FRIDAY 8:30 A.M. - 4:30 P.M.
CALL Intake:
420-6700
After Hours, Weekends and Holidays Call:
The Elder Abuse Hotline 431-4600

LEGAL MANDATE TO REPORT

Attorneys, Physicians, Osteopaths, Podiatrists, Chiropractors, Dentists, Psychologists Hospital employees (ORC 3701.01), Nurses licensed under Chapter 4723 (ORC), employees of an Ambulatory Health Facility, Home Health Agency, Adult Care Facility (ORC 3722.01), Community Alternative Home employee (ORC 3724.01), Employees of Nursing Homes, Residential Care Facilities, or Home for the Aging, (ORC 3721.01), Senior Service Providers, Peace Officers, Coroners, Clergymen, Employees of a Community Mental Health Facility, and any person(s) engaged in social work or counseling having reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation shall immediately report such belief to the County Department of Human Services.

Any person who makes a report in response to the legal mandate (ORC 5101.61) shall be immune from civil or criminal liability unless acting with malicious intent. No employer or other authority figure shall in any way retaliate against an employee for reporting.

INVESTIGATIVE AND PLANNING PROCESS

Cases that have been accepted by the Intake Unit are assigned to a Protective Services Social Worker for investigation of the allegation. The Social Worker will initiate activity of the investigation within no more than three working days and will meet with the client for a face-to-face interview within seven working days. Immediate action will be taken to protect the adult as warranted.

The Social Worker will complete an assessment of the client's situation and risk for abuse, neglect, or exploitation within the first thirty days of case activity. An individual treatment plan is devised with the client based on needs. Services will be arranged recognizing the client's right for self-determination. Types of Adult Protective Services may include case management, medical care, mental health services, legal advice, money management, home support services, referrals for community resources, and in some cases, guardianship or placement services.

Seeing a senior citizen subjected to abuse, neglect, self-neglect, or exploitation is difficult. If the victim is competent to make decisions, he or she has the right to decide to accept or refuse the services offered.

Our responsibility is to inform older adults of their rights, investigate the report, assist in planning and provide services, if available. Our commitment is to do this in the most dignified and least restrictive way possible in accordance with the needs and wishes of the person served.

DESIGNATED AGENCIES

Cuyahoga County Department of Senior and Adult Services is the only agency in Cuyahoga County that can accept reports of suspected abuse, neglect, self-neglect and/or exploitation. By agreement with DSAS, designated agencies also investigate and provide protective services.

The following designated agencies work with the DSAS in providing protective services:

- Benjamin Rose Institute
- Catholic Social Services
- Jewish Family Service Association
- Lakewood Office on Aging

INTRODUCTION

Adult Protective Services (APS) are intended to assist impaired adults who may be harmed due to abuse, neglect or exploitation. The Adult Protective Services for Adults Law passed in Ohio in 1981 (ORC 5101.60). The law requires reports to county departments of human services of suspected abuse, neglect and/or self-neglect and exploitation of impaired adults age 60 and older who reside in the community. In Cuyahoga County the Department of Senior and Adult Services (DSAS) also serves impaired adults 18-59 years of age meeting specific departmental acceptance criteria. All reports are confidential. The goals of protective services are to reduce, remedy and prevent the reoccurrence of conditions causing endangerment to maximize the adult's independence and to prevent unnecessary institutionalization.

DEFINITIONS

"Abuse" means the infliction upon an adult by him/herself or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish.

"Neglect" means self-neglect and/or the failure of an adult or caretaker to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness.

"Exploitation" means the unlawful or improper act of a caretaker using an adult or his resources for monetary or personal benefit, profit, or gain.

"Emergency" means that a same-day intake or assigned social worker response is indicated because (a) the client cannot self preserve due to physical and/or mental impairments, and (b) the client's resources to meet his/her needs are insufficient or nonexistent. These circumstances are not on-going chronic problems. The legal requirement is a response within 24 hours.

ABUSE	
◆ verbal abuse	◆ multiple or severe bruises or burns
◆ client expresses fear	◆ broken bones or wounds
◆ restrained, tied locked in	◆ injuries at several stages
NEGLECT AND SELF-ENDANGERING BEHAVIORS	
◆ suicidal acts	◆ confusion
◆ wandering	◆ malnourished
◆ refuses medical treatment	◆ homeless
◆ inability to care for self	◆ dirt, fleas, lice
◆ untreated medical conditions	◆ ulcerated sores
◆ life threatening behaviors	◆ fecal/urine odor
◆ bedsores	◆ animal infestation
EXPLOITATION	
◆ misuse of person, funds, property or possessions	

CASE ACCEPTANCE CRITERIA FOR INVESTIGATION

THE LAW REQUIRES THE FOLLOWING CRITERIA

- ◆ Persons 60 years of age and over with a physical and mental impairment which prevents him/her from providing for his/her own care or protection.
- ◆ Suspicion of abuse, neglect, self-neglect or exploitation.
- ◆ Residing in an independent or assisted living arrangement.

DEPARTMENTAL POLICY EXTENDS PROTECTIVE SERVICES TO ADULTS UNDER AGE 60 AND REQUIRES THE FOLLOWING CRITERIA

- ◆ Persons 18 - 59 years of age.
- ◆ Suspicion of abuse, neglect, self-neglect or exploitation.
- ◆ Residing in an independent or assisted living arrangement.
- ◆ Unable to minimally provide for or care for self for any one of the reasons below:
 - physical illness
 - physical disability
 - developmental disability but not eligible for services from the Cuyahoga County Board of Mental Retardation/Developmental Disabilities.
 - dementia

IN BOTH TYPES OF CASES THE INTAKE SOCIAL WORKER WILL ASK THE FOLLOWING:

- What is the problem?
- What is the risk to the adult?
- How is the adult unable to provide for/protect self?
- How long has this situation existed?
- What has changed recently that prompted your call?
- Who is helping with the problem and how?
- What is the potential for danger/violence?
- Who is aware of the referral?

It is the responsibility of the Intake Social Worker to obtain information and make a determination whether these criteria have been met.

REPORT THAT WILL NOT BE ACCEPTED INCLUDE:

- ◆ **Adults age 60 and over:**
 - who have a guardian, when no abuse, neglect, self-neglect, or exploitation is alleged.
 - active with the County Department of Children and Family Services, unless requested to do so by that Department.
 - where the sole focus is prevention without a known history of abuse, neglect, self-neglect or exploitation.
 - eligible for protective services from the Cuyahoga County Board of Mental Retardation/Developmental Disabilities.
 - who reside in nursing homes (call Ohio Department of Health at 1-800-342-0553).

MEMORANDUM

TO: JUDGE DONNELLY
FROM: JENNIFER HOCH
DATE: MARCH 2, 2007
RE: POLICE LIABILITY AND TEMPORARY RESTRAINING ORDERS

Question Presented:

What is a police officer's liability when he forcibly enters a dwelling pursuant to a temporary restraining order (TRO) issued under R.C. § 5101.63?

Discussion:

The Ohio Revised Code sets forth procedures for reporting neglect of an adult. Certain caregivers and professionals are required to report suspected neglect, abuse or exploitation to the county department of human services. R.C. § 5101.60(B). The county department of human services then conducts an investigation of the report, including a face-to-face visit with the adult who is the subject of the report, preferably in their residence, to determine whether protective services are needed. R.C. § 5101.62. If, during the course of an investigation conducted pursuant to R.C. § 5101.62, the representative from the department of human services encounters resistance to the investigation from any person, including the adult who is the subject of the investigation, he or she may obtain a TRO under R.C. § 5101.63. Issued by the Court, the TRO prevents interference or obstruction and permits a peace officer to accompany the protective services representative to the residence. *Id.*

Entry into the dwelling of another without consent is a trespass, *see* R.C. § 2911.21, but

both the peace officer and protective services represented are exempted from both criminal and civil liability for this trespass under R.C. § 5101.61(D). The term “peace officer” includes any member of the organized police of any municipal corporation in Ohio. R.C. § 2935.01. Since police officers are authorized to help effectuate the investigation by carrying out the TRO, they come within the grant of immunity as set forth in 5101.61(D).

Additional immunity for liability stemming from police entry with a TRO may be found in the Ohio Political Subdivision Tort Liability Act. This act affords governmental actors, including police officers, protection from liability if the alleged injury occurs during the performance of a governmental or proprietary function. R.C. § 2744.02(A)(1). Police services are specifically defined as governmental functions. R.C. § 2744.01. Police officers lose this immunity for “acts or omissions outside the scope of employment...acts or omissions with malicious purpose, in bad faith, or in a wanton or reckless manner” and where liability is expressly imposed in another Revised Code section. R.C. § 2744.03.

Conclusion:

Police officers are protected from liability during a forcible entry pursuant to a TRO under *both* R.C. § 5101.61(D) and the Ohio Political Subdivision Tort Liability Act. A police officer carrying out a duty statutorily assigned to a “peace officer” is within the scope of employment. Immunity for acts in connection with this duty are therefore protected provided they are not committed with malicious purpose, in bad faith or in a wanton or reckless manner.