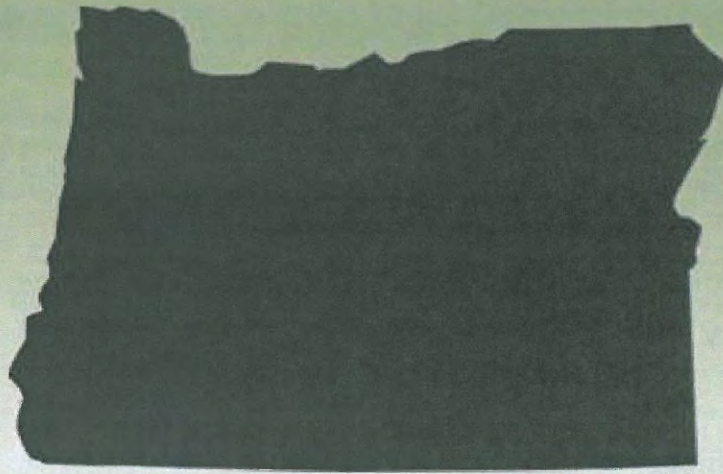


Lisa N. Bertalan is an Oregon attorney who has been practicing law since 1991. She also served as the Municipal Judge of Bend from 1993 to 2008. In her private practice, Ms. Bertalan specializes in estate and tax planning, probate, and elder law. She is a partner at the firm of Hendrix, Brinich & Bertalan of Bend, Oregon. Lisa served for many years on the Editorial Board of the Oregon State Bar Estate Planning Newsletter. She is also a past member of the Oregon State Bar Elder Law Section Executive Committee, the Oregon State Bar Estate Planning and Administration Executive Committee, the Department of Justice Elder Abuse Task Force, and the State of Oregon Long Term Care Advisory Committee. While serving on the Elder Abuse Task Force, Lisa drafted several bills that are now law to protect Oregon seniors from financial and physical abuse.

Officer RC Bigelow, a former United States Marine, has served as a City of Bend Police Officer since March 2005 and was promoted to Detective in January 2012. He is a member of the Deschutes County Elder and Adults with Disabilities Multidisciplinary Team and is married with two boys.

Deanne Lockridge is an Adult Protective Services Investigator with the Oregon Department of Human Services. For the past 15 years, she has investigated abuse and neglect for Aging and People with Disabilities with the State of Oregon. She trains local law enforcement in the tri-county area, local social workers from various hospitals, hospice agencies, and local fire departments. She is currently a member of the Jefferson County, Crook County, and Warm Springs Multidisciplinary teams serving the elderly and disabled. Her role in Warm Springs includes not only serving on the multidisciplinary teams, but also as the liason for DHS and abuse investigations within the Warm Springs community. She was also the head of the collaboration with tribal law enforcement to create a Memorandum of Understanding giving DHS the ability to investigate allegations of abuse/neglect on tribal land. Recently, she successfully completed her Guardian and Conservatorships certification from Portland Community College.

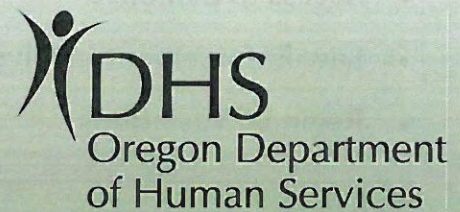
Rosie Vanderhoeven, M.A., has been providing geriatric care consulting and counseling in Central Oregon for the past five years as the business owner of Helping Aging Parents & Spouses (HAPS). She is an instructor with Oregon Care Partners and teaches a CEU course on Challenging Behaviors to Adult Foster Home providers and caregivers across the state. Rosie has also been a hospital chaplain for St. Charles Health Care System, Vice Chair of the GeroLeadership Alliance, and an active participant in the Oregon Elder Abuse Prevention Work Group (HB2205).



**Financial Exploitation Data Book: A Retrospective Look At  
Community Based Financial Exploitation in Oregon in  
2013**

**Prepared by Rebecca Feters, The Office of Adult Abuse  
Prevention and Investigations**

**OAAPI**



September 10, 2014

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# EXECUTIVE SUMMARY

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## A Message from Our Director



In 2013, The Office of Adult Abuse Prevention and Investigations (OAAPI) released its first retrospective study of community based financial exploitation in the state of Oregon. The information contained in the report was based on Adult Protective Services (APS) investigations completed in 2011 and revealed some interesting facts about financial exploitation within our state. However, as a stand alone study, it was not possible to identify trends, variations, or one time anomalies in the data. And, as a first time venture, there were lessons learned and questions left unanswered.

In response, OAAPI has again closely examined the financial exploitation investigations conducted by APS in 2013 and offers the following findings as a means of more closely examining this very costly, prevalent, and disturbing form of abuse of our most vulnerable citizens.

Those of you who have read the 2011 version of this study will find much of this information familiar, but not all remains the same in Oregon. For example, while Financial Exploitation continues to be the most frequently investigated form of abuse in our State in 2013, it no longer holds the dubious distinction of being the fastest growing type of abuse investigated, having been replaced by Physical and Verbal abuse.

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# INTRODUCTION

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## Points to Remember When Reading This Report

In 2013, Financial Exploitation allegations increased by 18% over 2012 and represented 42% of all the abuse investigations conducted by Adult Protective services. These 3398 allegations were documented in 2929 individual reports. The discrepancy in numbers exists because one report may include multiple allegations, multiple victims, or multiple perpetrators. Of these 2929 individual reports, 623 were read and hand mined for the data included in this study.

As a reminder, Financial Exploitation continues to be defined under OAR 411-020-002 (1)(e) as:

Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

### Did You Know?

- If you witness or are aware of a situation that you believe meets the definition of Financial Exploitation, you should call your local APS office or call 1-855-503-SAFE.



# INTRODUCTION

## Points to Remember When Reading This Report

- Community based adult protective services generally involve the abuse or exploitation of individuals living in their own homes, apartments, or other non-licensed settings. However, some community investigations do involve reported victims living in facilities. These cases are considered community investigations when the reported perpetrator is not an employee or agent of the facility.
- The theft of “hours” referenced in the study generally involves privately paid (non-Medicaid) home care workers falsifying their pay records.
- The category of “free rent” involves reported perpetrators living with the reported victim without contributing to household costs while increasing overall costs to the victim. This would only be substantiated abuse if it were occurring without the victim’s consent, with a victim unable to provide consent, or as a result of undue influence.
- Case examples and quotes included in this document are from actual 2013 investigations and reports. Identity and minor details have been altered in the interest of confidentiality, but the circumstances in the stories remain accurate.
- Every effort was made to avoid the use of acronyms in this report, however, space constraints occasionally made it necessary. The following is a list of abbreviations you may encounter:

APS	Adult Protective Services	*Reported Victim and Reported Perpetrator are currently the terms used in the Oregon APS system to identify these parties in an investigation. They are used in this report for the purposes of consistency.
FE	Financial Exploitation	
LEA	Law Enforcement Agency	
MDT	Multi-Disciplinary Team	
NRCG	Non Relative Care Giver	
PoA	Power of Attorney	
RP	Reported Perpetrator*	
RV	Reported Victim*	

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# INTRODUCTION

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## Local Adult Protective Services Offices

Data in this report is often divided by Districts. Each District includes the following Counties:

District Number	Counties Included
1	Tillamook, Clatsop
2	Multnomah
3	Marion, Polk, Yamhill
4	Linn, Benton, Lincoln
5	Lane
6	Douglas
7	Coos, Curry
8	Jackson, Josephine
9	Hood River, Wasco, Sherman, Gilliam, Wheeler
10	Deschutes, Jefferson, Crook
11	Klamath, Lake
12	Morrow, Umatilla
15	Clackamas
16W	Washington
16CC	Columbia
17	Wallowa, Union, Baker Grant, Harney, Malheur

There are roughly 140 APS investigators located within these districts. Most conduct a combination of facility and community investigations, although larger counties may have staff that investigate within specialty areas.

Contact information for local offices may be located at:

<http://www.oregon.gov/dhs/spwpd/Pages/offices.aspx>

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# INTRODUCTION

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## The Philosophy of Adult Protective Services

Lastly, when reading this report, it is critical to both understand and remember the underlying principles and values of the Adult Protective Services Program. Although the primary focus of the APS process is on the health and safety of the reported victim, this is balanced with the duty to protect their right to self-determination. The fact that

someone is physically disabled or over the age of 65 does not, in and of itself, make them vulnerable or incapacitated.

### [ Case Example: Mr. A ]

When Mr. A's 2013 case of FE came up in the random sample, it was quickly discovered that there had been numerous prior investigations of FE, dating back five years and involving Mr. A's grandchildren as the reported perpetrators.

The investigations involve multiple loans taken out in Mr. A's name, the diversion of Mr. A's government benefits, and obtaining credit and cell phones in Mr. A's name. The total loss to Mr. A over the years is conservatively \$14,343.23.

Despite stating that he is aware that his family is taking advantage of him, Mr. A declines the option of pressing police charges, utilizing representative payee services, or active participation in the APS investigation. Mr. A notes that he prefers to handle the matter himself and states that his grandchildren have enough problems without him making it worse for them by pursuing criminal or civil remedies to their actions.

*As long as an individual has the cognitive capacity to understand the consequences of their choices and actions, and provided they are not being subject to the undue influence of others, they retain the authority and right to make those choices.*

This remains true no matter how harmful or inappropriate those choices may seem to concerned family or community members. This is often a point of great frustration and APS staff frequently hear questions such as, "How can you allow this to happen?" and "Why can't you do something about this?" It is incumbent upon the APS investigator to assess cognitive capacity and the possibility of undue

influence during the course of their investigation. However, if the evidence indicates that an individual has the capacity to make their own choices and is doing so of their own free will, to attempt to infringe upon those rights would be well outside the scope of the APS process.



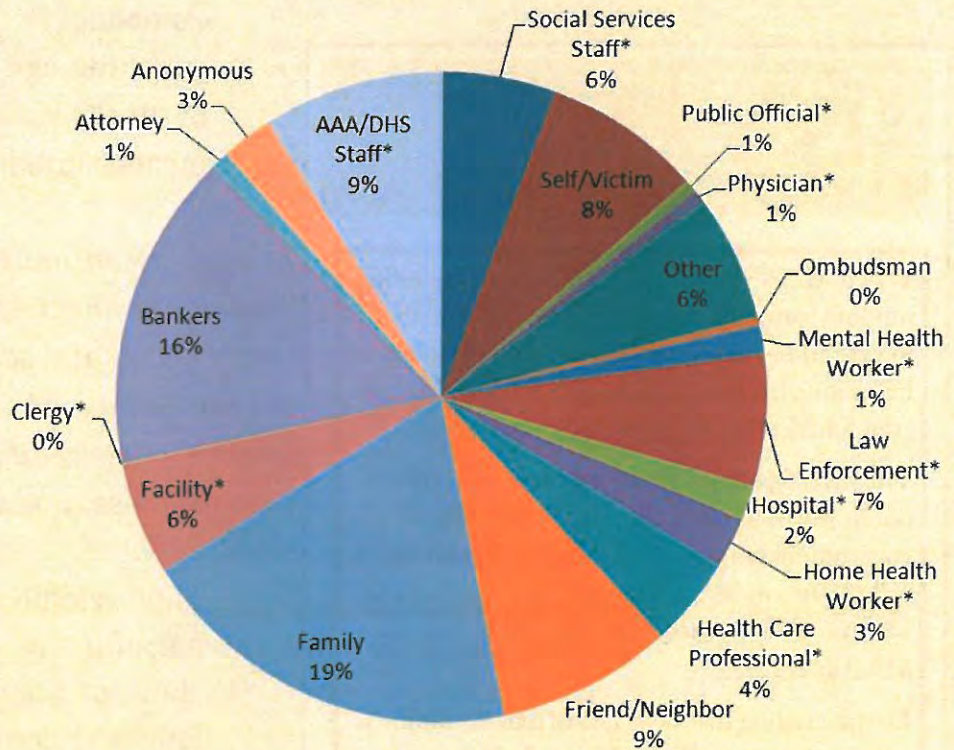
# THE COMPLAINANTS

## The 2013 OAAPI Financial Exploitation Data Book

Every investigation begins with the concern of a complainant. Without the calls, faxes, e-mails, and other forms of communication received from these individuals, APS would be unable to initiate an investigation or offer protective services.

In Oregon, there are many professionals who are mandated to report suspected elder abuse while acting in their official capacity. These are noted with an asterisk (\*) in the chart to the right. However, these were not the most frequent reporters of Financial Abuse

in 2013. In fact, it is those with a non-mandatory duty to report who do so at least 60% of the time.



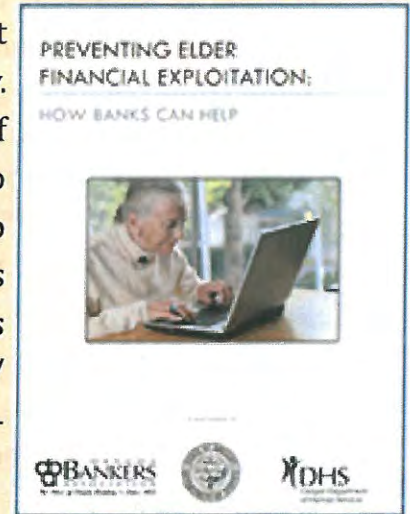
### Data Drill Down:

- Just because something is reported to APS does not mean that it actually occurred or that its occurrence constitutes abuse. When *only substantiated allegations* of abuse are examined, the most frequent reporters are bankers followed by family and law enforcement.
- Victims self report only 5.7% of all substantiated financial exploitation cases, as compared to 15.2% of substantiated verbal abuse cases and 11.3% of substantiated physical abuse cases. Only substantiated neglect is self reported at a lower rate. There could be a number of reasons for this such as not wanting the perpetrator of the abuse to be in trouble, shame at being “scammed”, or an actual lack of awareness that the abuse is occurring.

# THE COMPLAINANTS

## A Closer Look At Bankers and Case Managers

As noted on the prior page, bankers tend to be the most frequent reporters of financial exploitation outside of family. They are in a unique position to see the warning signs of financial exploitation and should ideally receive training to recognize what they're seeing as something to be reported to APS. In an effort to do just that, DHS and the Oregon Bankers Association teamed up to create the Bankers Tool Kit. This product can be located at viewed at <http://www.oregonbankers.com/community/elder-exploitation-prevention>



### [ Case Example: Mrs. F ]

Mrs. F moved to an assisted living in 2010. At the time she had the capacity to appoint her grandson as her Power of Attorney. Since that time she has experienced significant cognitive decline and can no longer remember who has her checkbook or manages her finances.

The facility became concerned when a payment for Mrs. F's care was returned for non-sufficient funds. When they contacted the grandson, he indicated that he would be applying for Medicaid since Mrs. F's resources were depleted.

When Mrs. F's grandson went to the local DHS office to apply for Medicaid to pay for his grandmother's care, the eligibility worker noted that he had sold Mrs. F's house in 2010 for \$200,000. The cost of her care, medication and other personal needs since that time had cost approximately \$100,000. The grandson was unable to adequately explain or provide documentation for the remainder of the funds, and ultimately advised the APS investigator that he had taken the money for his own use.

DHS and AAA eligibility workers and others in case management positions are also in a unique position to spot cases of financial exploitation, and specifically cases that might have a negative fiscal impact on Medicaid or other government funded benefit programs. In fact, of these types of cases seen in this year's sample, **72% were spotted and reported by these workers.**

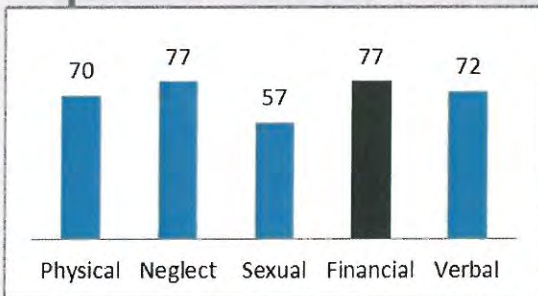
# THE VICTIMS

## General Demographics

Victims of financial exploitation are far more than numbers and graphs can adequately depict, but there are some general demographics that are important when trying to understand this complex issue. For example:

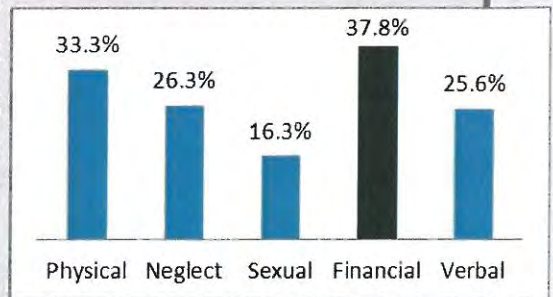
The average age of an individual who was found to have been the victim of financial exploitation in 2013 was 77. In comparison to victims of other types of abuse, this is the oldest age represented, tied only with victims of neglect. Victims of physical and verbal abuse were generally in their early 70's with victims of sexual abuse being substantially younger

with an average age of 57.



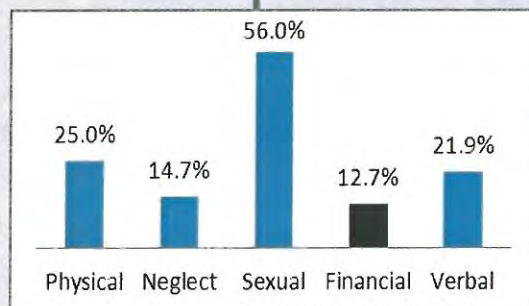
There were gender differences when looking at victims of financial exploitation as compared to other types of abuse. 37.8% of substantiated victims of financial exploitation were male, which is the highest male victim representation across all abuse types, the lowest being victims of sexual abuse.

(See OAR 411-020-002 for abuse definitions.)



APS works with individuals over the age of 65 and with individuals ages 18-64 with physical disabilities. Across all community APS investigations in 2013, 21% of the cases involved individuals with physical disabilities.

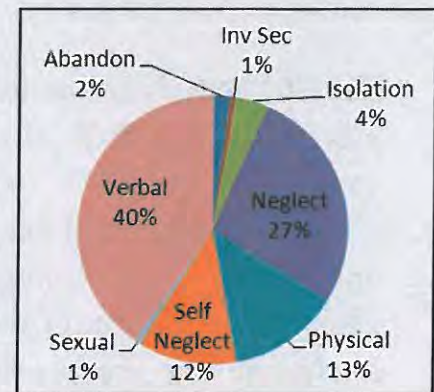
However, when looking at victims of financial exploitation, there is a much lower representation.



# THE VICTIMS

## Co-Occurring Abuse

The issue of co-occurring abuse during financial exploitation investigations was not a data point that was explicitly noted when the 2011 study was completed, although it was evident that it was occurring. Thus, during the 2013 study, this data was specifically collected from the sample. It was found that roughly 17% of the cases involved a second allegation of abuse, most commonly verbal abuse, while an additional 3% involved two additional allegations.



Although it is difficult to obtain co-occurring abuse information for other abuse types from the current data system without hand mining, the data that is available indicates that the rate of co-occurring abuse may actually be higher in these other groups, approaching 27%.

### [ Case Example: Mrs. B ]

Mrs. B is a 77 year old woman who recently relocated to OR from CA at the encouragement of her daughter. She is now living with her daughter and three grandchildren in a home on which she made the down payment. But things have not gone exactly as planned.

Mrs. B continues to make the house payment despite her daughter's assurances that she would do so. Mrs. B's daughter believes that the home should be transferred into her name as compensation for the work she has done to the home, but Mrs. B has confided in a family member that the work is not completed nor done well and that the grandchildren have caused substantial damage to the home including broken windows, doors, and holes in the walls. Mrs. B also pays \$600 per month toward food and purchased all of the furniture and appliances.

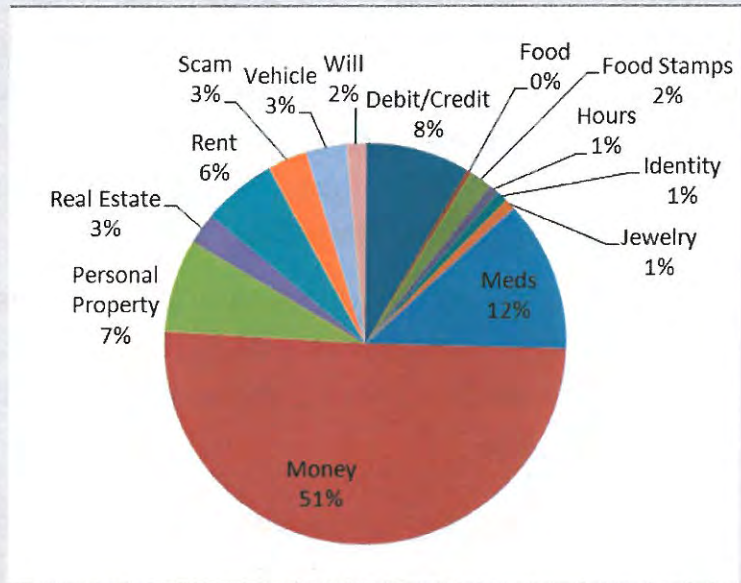
In addition, Mrs. B's grandchildren have proven challenging to live with. She often locks herself in her room in an effort to feel safe and has spent the night out in her car for the same reason. During a recent altercation with one of the grandchildren, Mrs. B was grabbed by the arm and thrown to the floor. Mrs. B reports that all of the grandchildren make demeaning comments to her, including calling her "crazy", and have threatened to shoot her dog.

Mrs. B was ultimately able to live in the home, still in her name, by herself, but stopped short of obtaining a restraining order against any of her family members.

# THE VICTIMS

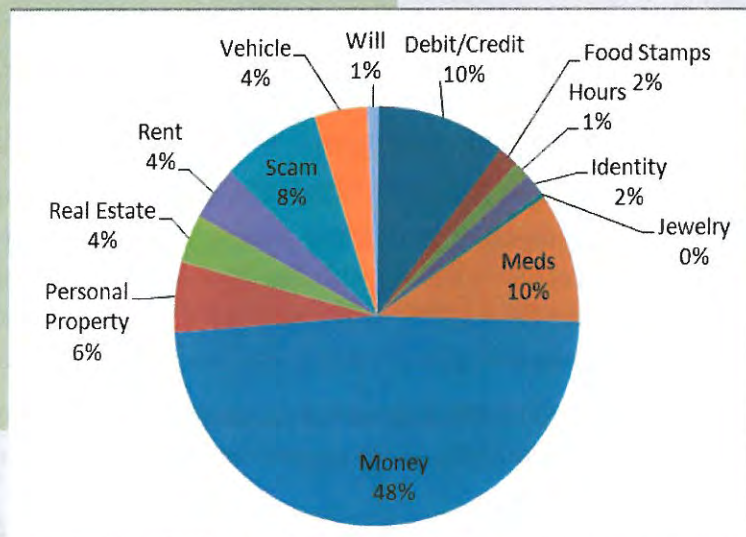
## What is Taken From Them

The 2011 study let us know that financial exploitation in Oregon consists of much more than the theft of monetary assets. It can take many forms and that trend continued in 2013 with the alleged unauthorized use of debit and credit cards making up an even larger portion of this year's study. At the same time, the alleged theft of money (cash, bank and investment accounts) dropped from 60 to 51% of the sampled investigations. And, although it still remains a very small portion of the sample, pressuring someone to change their estate plan more than doubled in prevalence.



### Data Drill Down:

- How does the picture of financial abuse alter when we look at only substantiated cases instead of all the investigations conducted? The trend away from the theft of money and toward the unauthorized use of debit and credit cards becomes even more evident, as does the vulnerability of this population to fall victim to professional scammers.



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# THE VICTIMS

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## Facility Non-Payment

A category not explicitly noted in the charts on the prior page is that of facility non-payment. In both studies this has been a sub-set of the “money” category as it generally involves the client’s money not being used on their behalf and instead being used by a third party for their own benefit. However, in reality this is a much more complicated issue that deserves a closer look.

In the 2013 sample, close to 20% of the reported victim’s lived in a facility. As previously noted, these cases are considered community investigations when the reported perpetrator is not an employee or agent of the facility.

Not all of the facility residents in the sample fell into the “facility non-payment” category, however, close to 30 were, which represents 4% of the overall sample. Extrapolated out to all FE cases, this is an issue that could impact as many as 133 individuals.

Of the substantiated (69%) victims of this type of exploitation, the average loss to them was **\$12,601**. If applied to all FE cases, this could amount to an annual loss of **\$1,146,691** that is absorbed by victims, their families, facilities, and the Medicaid system.

### Case Example: Mr. M

Mr. M has lived in a memory care facility for close to a year. He has advanced dementia and is unable to manage his own finances, nor provide any information as to how they are managed. However, when he moved to the facility, his son signed paperwork indicating that he was the responsible financial party. Mr. M’s monthly cost of care is debited automatically from his checking account, but recently has been returned to the facility as having non sufficient funds. The facility is owed thousands of dollars and has issued a 30 day move out notice.

Mr. M’s son initially states that he was unaware that the facility was not being paid and had been using funds in the account for items that he felt Mr. M would wish to purchase such as gifts for his grand children. When he is presented with bank statements that show expenses for travel, gambling, restaurants and hotels that in no way benefitted Mr. M, he is alternately belligerent and remorseful but is unable to repay the missing funds.

# THE VICTIMS

## What is Taken From Them: Medication Theft

### Did You Know?

- Seniors represent just over 13% of the population, but consume 40% of prescription drugs and 35% of all over the counter drugs
- On average, individuals 65 to 69 years old take nearly 14 prescriptions per year, individuals aged 80 to 84 take an average of 18 prescriptions per year.

-The Food And Drug Administration

2013 substantiated outcomes of these cases decreased, but more significantly, the inconclusive finding rate remained significantly higher than is seen with other types of abuse cases.

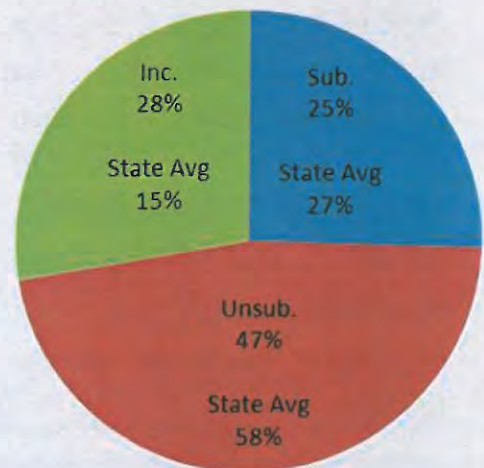
When looking at specific perpetrator types, substantiated cases of medication theft were most frequently perpetrated by non-relative care givers. However, when all family relationships were combined (daughter, granddaughter, son, grandson, sibling and spouse) they accounted for 50% of the cases.

Individuals with physical disabilities are represented at a higher rate in this theft type group than they are in other investigation types. While they comprise only 12.7% of all financial exploitation cases, they make up 31% of the medication theft cases.

The issue of medication theft remains an active one in Oregon. Although not dramatically more prevalent in this study than the last, it did increase slightly from 11 to 12% of the allegations and represents 10% of substantiated financial exploitation cases.

Unfortunately, medication theft continues to be a difficult type of abuse to investigate in a community setting, based in large part on the lack of documentation (such as that seen in facility settings) that monitors medication counts and administration.

Also a factor is the generally unsecured nature of medication in a private home. In



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# THE VICTIMS

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## What They Have to Say

When asked if victim knew who might be taking the medication: *Yes, there is someone I suspect, but I depend on him. Please do not talk to him about this; I really don't need him mad at me right now. I'm not feeling well and have to rely on him to get me to the doctor.*

*If he just got a job, I wouldn't have to help so much. I've already given around \$20,000. This time he started screaming at me and wouldn't leave. We fought about it, but then I just gave in.*

When asked why victim had previously denied that abuse was occurring: *Why? It's complicated, but when you reach my age, you just choose to put up with the little things to keep the peace.*

*My granddaughter has been guilt tripping me and pressuring me for money. It always comes back to playing on the kids. I don't want my great grandchildren to go into foster home and she keeps reminding me of that.*

First APS investigation: *This is harassment and a violation of my privacy. There is no theft or fraud. This person and I are in a relationship and this is no one's business but mine.*

Second APS Investigation two months later: *I feel so stupid. I signed my house and car, everything, over to this person. I only knew this person four months. I was just so lonely.*

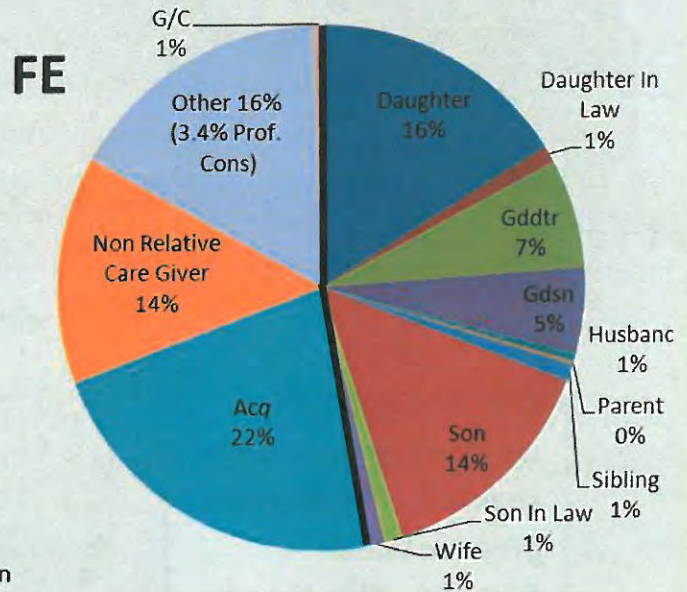
*This whole thing shakes me to the core. Whom can we trust?*



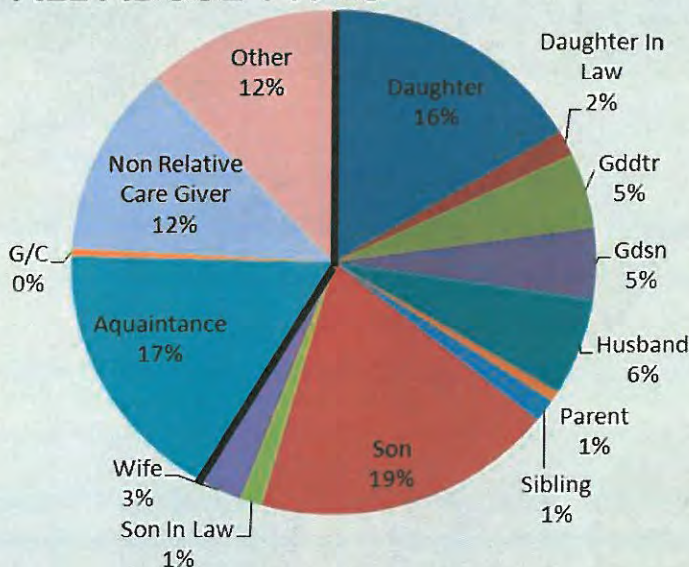
# THE PERPETRATORS

## Who Are They?

This year's study confirms what the prior study, as well as most other studies of financial exploitation tell us, that perpetrators of this type of abuse are often a family member of some sort. In 2013, 50% of all alleged and **46% of all substantiated financial exploitation was committed by someone with a familial relationship.**



## ALL ABUSE TYPES



What is important to note, however, is that this is not exclusive to financial exploitation and, in fact, is actually less common in financial cases than other abuse types. In 2013, **substantiated perpetrators of all types of abuse were comprised of 59% family members.**

It is important to remember that, although not family, most perpetrators have a trusted relationship with their

victim. **Less than five percent of the sample were victimized by someone who was truly a stranger, i.e. someone previously unknown to them.**

### Data Drill Down:

There is surprisingly little difference between family and non-family perpetrators when it comes to what is taken.

- Both take money most frequently, 69% and 72% of the time respectively.
- The average substantiated loss to the client is \$21,219 when the perpetrator is a family members vs. \$21,265 when the perpetrator was a non-family member.

# THE PERPETRATORS

## The Professional Con

Of the cases sampled, approximately 5% were professional scams and cons. These cases vary from other financial exploitation cases on many levels.

- Substantiation rates are 80% vs. 29% for all other FE types.

### [ Case Quotes ]

- *“I’m not stupid; I know there are scams out there. But I decided to go ahead and see if there really was some money in an inheritance that I could get.” - Victim who sent \$6,500 to Nigeria*
- *“I’ve been a victim of scams in the past, but haven’t sent any money for months. I did recently deposit checks in my account that were fraudulent and am now getting threatening e-mails from the FBI.” -Victim who had to apply for Medicaid to pay medical bills as a result of fraud loss*
- *“He seemed like a nice young man. I thought I was helping get magazines to veterans overseas.” -Victim who later had her ATM card used to withdraw all the money in her*

- Reported perpetrators are rarely known by name or able to be interviewed.
- Based on the sample, the revictimization rate is nearly five times higher than other FE victims.
- This is a type of financial exploitation that fits relatively easily into a criminal framework for law enforcement. These cases in the sample had some level of law enforcement involvement 80% of the time.

In addition to the above variations, the 2013 study shows:

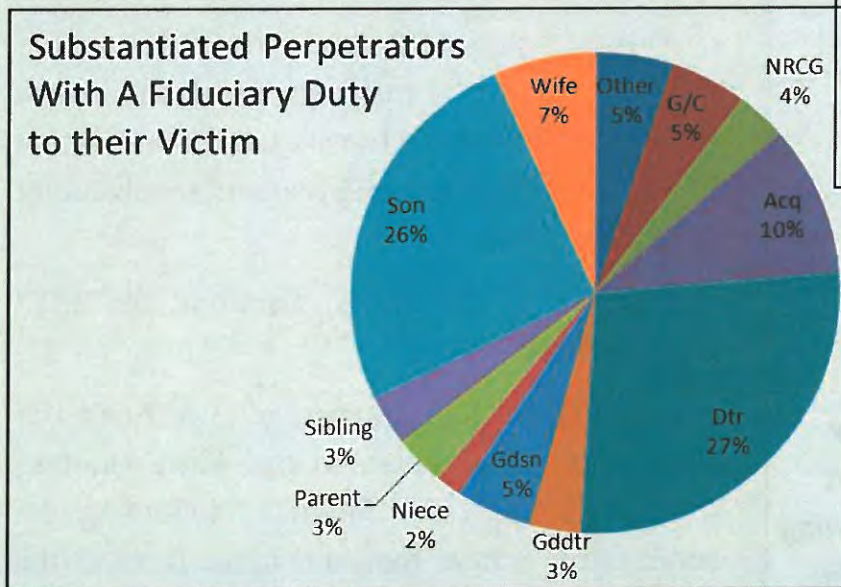
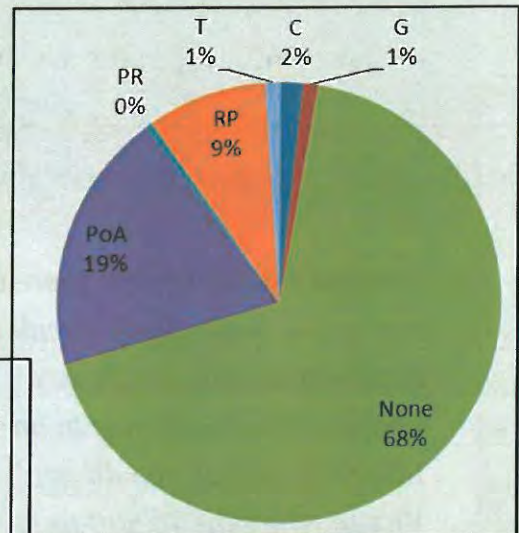
- The victims lost an average of \$17,664 per case. Some, as noted in the “Case Quotes”, needed to apply for Medicaid following the fraud while others took out loans to send the scammers.
- Scams in this sample originated in Jamaica, Nigeria, The Czech Republic, Malaysia and the local community. Vehicles such as the phone, internet, mail and door to door visits were all seen.
- Bankers are well trained and situated to spot this abuse, accounting for reporting 40% of all substantiated cases.

# THE PERPETRATORS

## The Fiduciary Relationship

33% of all the of the substantiated perpetrators in the 2013 sample had a fiduciary relationship with their victim, up from 25% in the prior study.

For the purposes of this study that could mean they were acting as a Power of Attorney, Guardian, Conservator, Trustee, Representative Payee for government benefits, or as Personal Representative of an estate.



While individuals with a familial relationship make up 46% of all substantiated financial exploitation, they made up 85% of the substantiated cases in which the perpetrator had a fiduciary duty. In other

words, in addition to being related to the victim, they had also assumed a duty and responsibility for the management of some or all of that victim's assets and/or income.

### Did You Know?

- The Uniform Power of Attorney Act was passed in 2006 in an attempt to increase Power of Attorney consistency across states and increase protections for incapacitated individuals.
- The Act applies only to financial PoAs, not medical.
- The Act is only applicable in a state if it has been adopted into state law.
- As of July, 2014, fourteen states had adopted the Act with another four having it introduced to their legislature to do so. Oregon is not yet one of those states.

- The Uniform Law Commission

# THE PERPETRATORS

## What They Have to Say

*Had we known that using mom's money was a problem we wouldn't have. We didn't see this as taking her money because she didn't see it that way. She has always given us money.*

*When PoA was asked why payments to the facility for grandmother's care were not made: "I've had a lot going on in my personal life and have gone through a divorce. I just let payments from the facility slide. I did use about \$20,000 of her money for myself during that time and haven't paid it back yet, but I did do a promissory note."*

*I thought this was all resolved. Can't the State just leave me alone? This is harassment. I produced the documentation you all wanted, but I don't have receipts for everything.*

*I don't work for the State so I don't have to keep receipts for the money I spend from his account.*

*I had planned to move into Ms. Ds home to be her caregiver. That didn't work so I became her PoA. I did this because her kids were taking financial advantage of her. I used \$80,000 of her money but it was with her permission. There is no written contract or agreement, just verbal. Ms. D felt I should be rewarded for taking care of her before she went to the facility. I was really misguided and misinformed. I was of the impression that once her money was gone, she'd qualify for Medicaid. I didn't realize there would be a question about where her money went.*

*I have Power of Attorney so I can say "yes" or "no" to just about anything.*

*I feel like everyone thinks I'm the bad guy, but I took care of my dad for many years and you don't know how hard that was. I never took a dime of his money for myself.*

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# THE INVESTIGATORS

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Oregon has high expectations of its Adult Protective Services staff. They are mandated to respond quickly to the calls of concern received in their offices, assuring first and foremost the safety of the reported victim. They are charged with investigating allegations of abuse, often complicated by witnesses who are unwilling participants in the process, complex and long standing personal and family dynamics, and limited authority to obtain evidence or cooperation. They frequently enter victim, perpetrator, and witness' private homes unannounced and often unwelcome, and encounter challenging if not dangerous environments along the way. When this process is complete, they are asked to write a report that is detailed enough to withstand the scrutiny of law enforcement, administrative law judges, probate courts, and other parties while still maintaining the confidentiality of the participants in the investigation. For community APS investigations, this should all occur within 120 calendar days.

APS services are provided in 16 districts throughout the state, some of which may have multiple offices. Some local offices are operated by the Department of Human Services and others are operated by local Councils, Area Agencies on Aging or Counties under a contract with the Department of Human Services.

In addition to investigating allegations of community based financial exploitation, local APS staff are also responsible for investigating allegations of abandonment, verbal and emotional abuse, physical abuse, neglect, wrongful restraint, involuntary seclusion, sexual abuse, self neglect and abuse taking place in licensed care settings. In 2013, local APS staff investigated over 14,000 such allegations.

## Did You Know?

The history of Adult Protective Services on a national level dates back to 1960 when the National Council on Aging conducted a study on adult abuse issues. By 1981 all states had some mechanism to provide protective services to vulnerable adults and a decade later, 42 had mandatory reporting laws. Oregon's Adult Protective Services system can be traced back to the early 1980's.



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# THE INVESTIGATORS

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## Investigating Financial Exploitation

Each type of abuse investigated by APS has its unique characteristics and complexities. However, APS staff have often noted that financial exploitation cases tend to take the longest. This may be due to time spent waiting for requested documents and letters to arrive. It may be due to the time it takes to review and analyze that information. Whatever the reason, 2013 data confirmed that ***the average financial exploitation case takes 26% longer to complete than other abuse investigations.***

### Did You Know?

All of the Oregon Administrative Rules that govern the Adult Protective Services investigative process may be located at:  
[http://www.dhs.state.or.us/policy/spd/rules/411\\_020.pdf](http://www.dhs.state.or.us/policy/spd/rules/411_020.pdf)

Financial exploitation cases are ***substantiated at a slightly higher rate than other community abuse types (28% vs 27%)***. The Oregon Administrative Rules that govern investigations indicates that an investigation is substantiated when the preponderance (majority) of the evidence gathered and analyzed indicates that the allegation is true.

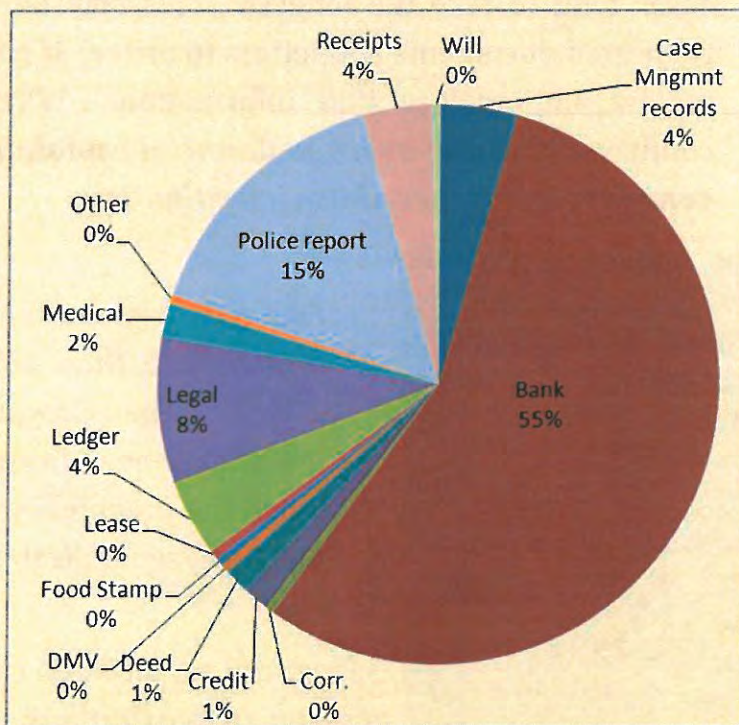
Financial exploitation cases also tend to have a ***higher rate of inconclusive findings (20% vs 15%)***. Inconclusive means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

As with all types of abuse, the Oregon Administrative Rules requires that investigations are conducted in an professional, objective, and complete manner. Complete means that all parties to the investigation such as reported victims, reported perpetrators and witnesses with knowledge of the allegation have been interviewed. This is often easier said than done. While ***95% of all reported victims were available for interview in the sample cases, it was only possible to interview the reported perpetrators 60% of the time.*** They were often unable to be located, unwilling to participate in the process, or simply unknown to the victim and investigator.

# THE INVESTIGATORS

## Investigating Financial Exploitation: Access to Evidence

Conducting a complete and thorough investigation also means that all available or relevant documentary or physical evidence has been obtained and reviewed. Not surprisingly, in financial exploitation cases, this very often means bank or investment records. However, this is not exclusively the case. Receipts, ledgers, estate documents, and other sources of information can prove equally as valuable. Such records were available to investigators in 33% of the cases sampled, essentially unchanged from the prior study.



The value of some level of documentary evidence cannot be understated when it comes to financial exploitation investigations. When such evidence is available, substantiation rates not only rise, but inconclusive rates drop by nearly 36%.

Although very difficult to assess, it appeared that in 14% of the sample cases in which records were not available, access to them likely would have changed the outcome of the investigation.

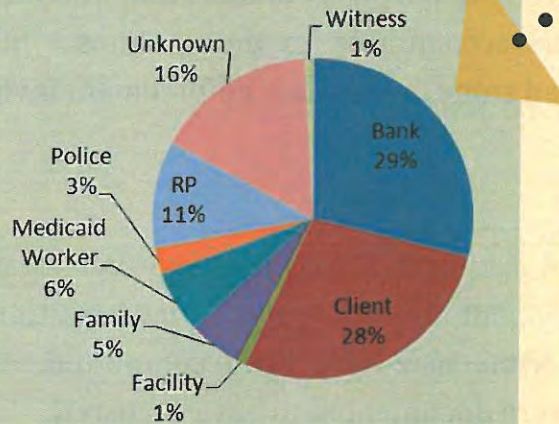
	Substantiated	Unsubstantiated	Inconclusive
All Community APS	27%	58%	15%
All FE Cases	29%	51%	20%
All of Sample	30%	51%	19%
Sample with Records	47%	39%	14%

# THE INVESTIGATORS

## Investigating Financial Exploitation: Access to Evidence

### Data Drill Down:

- How do investigators gain access to financial records? Very often it is the reported victim themselves that provide the records or consent to the investigator obtaining them. Similarly, it can be the reported perpetrator who provides the records as evidence that they did not commit the abuse of which they are accused.



The importance of access to financial records has not gone unnoticed. In 2012 the legislature adopted HB 4084 which allowed APS to work with law enforcement to obtain a subpoena to access records in cases where a victim is incapable of authorizing access. In the course of case review, however, there was only one case in the sample where it was evident that this had occurred.

It is reported that limited resources at the law enforcement level make it difficult for them to accommodate the number of requests that could be made by APS for assistance.

Local APS staff also report that law enforcement often has to prioritize their efforts and thus are generally only able to assist with a subpoena for cases that appear to rise to the level of a crime. This creates something of a catch-22 for investigators since it is difficult to make a compelling case to law enforcement that a crime may have been committed without the documents to begin to make the case.

However, local APS staff also report that this comprises less than 5% of their perceived barriers to obtaining evidence, a much larger portion (54%) being attributed to banks choosing not to honor signed releases of victims/customers or being unwilling to share records even when they are the reporting complainant.



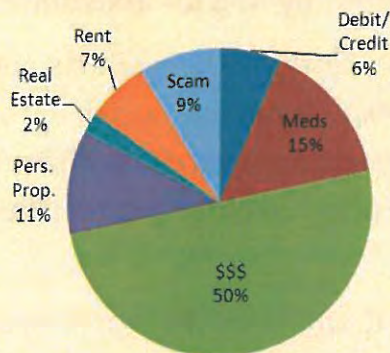
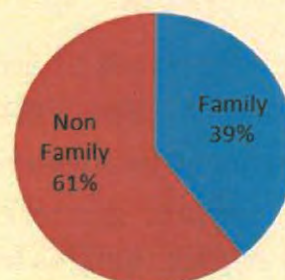
# THE INVESTIGATORS

## Investigating Financial Exploitation: LEA Involvement

The involvement of law enforcement in financial exploitation cases is not only necessary for the purposes of obtaining records, but also for holding substantiated perpetrators accountable for their actions. In this year's study, 28% of the cases sampled had some level of law enforcement involvement, up from 24.1% in the 2011 study.

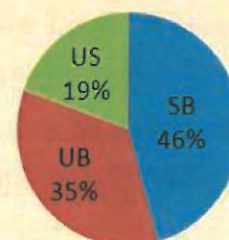
Per Oregon Administrative Rule, APS investigators are required to cross report to law enforcement at the point in an investigation that they have reasonable cause to believe a crime may have been committed. In 16% of the cases sampled, such referrals were documented to have occurred.

In a number of the cases pulled for this study, law enforcement declined to pursue a case referred by APS, feeling that the matter constituted a domestic or civil dispute rather than a crime. This is most frequently seen in cases where there is a familial relationship between the alleged victim and perpetrator. In fact, law enforcement is nearly twice more likely to get involved in a case when the alleged perpetrator is not family.



When law enforcement does work with APS on a case, it tends to involve the theft of financial assets, with medication and personal property theft well represented in the sample as well.

The positive effect of having law enforcement involved in a case is evident when looking at substantiation rates, which increase by 58% (29 vs 46%) when compared to other financial exploitation cases.



# THE INVESTIGATORS

## Regional Variations

There are regional variations in data throughout our state, and some notably large ranges in substantiation rates, access to record rates, and loss amounts. And, while we typically expect that Multnomah County (District 2) to have a large percentage of the cases that are investigated in the state, in 2013 they exceeded the 65+ percentage of their population. In every District, money was the most commonly investigated type of exploitation.

District	Number of Staff (average)	FE Cases in 2013	% of State FE Cases	% of 65+ in OR	Substantiation Rate	Access to Records	Avg. Amount of Loss	Most Common RP Relationship
1	2	64	2%	2%	14.1%	15.8%	\$9,532	Non Relative Care Giver (NRCG)
2	30	704	21%	15%	30.7%	32.9%	\$45,011	Acquaintance
3	9	432	13%	12%	26.6%	30.6%	\$14,648	Daughters
4	8	98	4%	7%	30.6%	20.8%	\$21,387	Acquaintance
5	10	342	10%	10%	23.4%	32.6%	\$5,916	Daughters
6	7	145	4%	4%	23.4%	48.4%	\$11,301	Acquaintance
7	6	157	5%	4%	22.9%	37.5%	\$8,081	NRCG
8	14	314	9%	10%	24.2%	24.1%	\$26,868	Acquaintance
9	3	93	3%	2%	45.2%	45.0%	\$11,001	Acquaintance
10	7	141	4%	6%	19.9%	34.3%	\$11,721	Daughters
11	4	150	4%	2%	32.0%	50.0%	\$10,628	Daughters
12	3	91	3%	2%	24.2%	50.0%	\$15,093	NRCG
15	9	359	11%	10%	42.6%	26.2%	\$12,029	Sons
16	10	154	5%	10%	32.5%	40.0%	\$11,939	Sons & Dtrs (Tie)
16CC	2	21	1%	1%	23.8%	20.0%	Ins. Data	Daughters
17	6	73	2%	3%	24.7%	29.2%	\$11,624	Acquaintance

# THE INVESTIGATORS

## What They Have To Say

*A troubling issue is the police have to prove beyond a reasonable doubt that the abuse occurred, then sell it to a jury. Unless it's a rock solid case the DA is hesitant to prosecute. So, we see perpetrators of abuse getting away with it. It's sad and expensive for our society.*

*The idea that our elders who have been financially exploited are sick more often or die earlier than their peers who have not been similarly victimized has always been a striking statistic for me - this is NOT just a property crime or victim-less crime.*

*Our clients are embarrassed and ashamed to the point of not wanting anybody to know. Not the bank or family members. I have had 1 client who accepted counseling from our mental health specialist to deal with the trauma.*

*This is going to be one of those cases that the more you dig, the uglier it is going to get.....*

*It's clear to me that something has occurred in the past with this family, which I believe is the reason for none of the kids caring that their mother is being mistreated by their sibling.*

*In many of my cases, the effects on our vulnerable adults manifests in poor health, fear to continue living alone, and the devastation of learning that a loved-one has perpetrated a crime that impacts trust and on-going family relationships. In one case, my client had nightmares of such significance, she moved in with her son and daughter-in-law when her favored granddaughter took all of her \$25,000.00 in savings - truly her life savings.*

*We have a monthly meeting with all of the bankers in the area. The bankers discuss concerns with customers and we consult on the possible signs of abuse. We have also conducted trainings at a local CPA's office. This contributes to our high reporting rate.*

# THE BOTTOM LINE

## Doing the Math

While most people would likely agree that financial exploitation is “wrong” or “bad” many might also feel that it doesn’t impact them directly. But, in fact, the fiscal impact of this abuse type affects us all.

Based on analysis using the current data collection system, approximately 3% of the cases in the sample were noted to have a negative fiscal impact on the Medicaid system or some other government funded entity such as food stamps or the VA. The total loss to the system attributed to this portion of the sample cannot fully be calculated due to limitations in documentary evidence, but would be no less than **\$407,000**. Extrapolated out to all 2013 FE cases that would conservatively equal **\$1,882,267**.

### Did You Know?


For each case of financial exploitation that reaches the attention of APS or other authorities, an estimated 44 cases went unreported.

-The New York State Elder Abuse Prevalence Study

While not all financial exploitation has a direct, immediate, or documentable impact to government funded programs, the loss to the individual victim cannot be ignored and quite possibly does lead to a need for government assistance at a later date.

If this study is applied to these numbers, the annual impact to Oregonians of Financial Exploitation is .....

20% of the sample experienced substantiated financial exploitation for which it was possible to assign a specific dollar amount, although in many cases this amount is grossly under-representative of the actual loss. That said, the total for these individuals in 2013 exceeded **\$3,189,121** with the average loss for these cases being **\$24,915**. If this average is applied to all 969 of the substantiated case of financial exploitation in **Oregon** in 2013, and we assume that 48% of those involve the theft of money, the loss reaches a staggering **\$11,585,475**.



439,257,487

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# HOW TO GET INVOLVED

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Be Part of the Solution

Familiarize yourself with the warning signs of financial exploitation by visiting:

⇒ [http://www.preventelderabuse.org/elderabuse/fin\\_abuse.html](http://www.preventelderabuse.org/elderabuse/fin_abuse.html)

Or call your local APS office or OAAPI for additional resources and information or to request a presentation for your agency or organization.

Know how to report abuse by visiting:

⇒ <http://www.oregon.gov/DHS/abuse/Pages/report.aspx>

Or call 1-855-503-SAFE

Are you a mandatory reporter? Find out by visiting:

⇒ <https://apps.state.or.us/Forms/Served/de9373.pdf>

Educate yourself, your agency and your co-workers about the mandatory duty to report using the Mandatory Reporting brochure located at the above link.

Are you an elder law attorney, bank employee, notary, realtor, case manager or other professional that has frequent contact with individuals appointed as Power of Attorney for an elder? Consider distributing this guide to individuals you encounter that have been placed in a position of responsibility for someone else's assets:

⇒ <http://www.consumerfinance.gov/blog/managing-someone-elses-money/>

Do you or someone you know have medications, cash or other valuables in easily accessible, non-secure locations? Whether you or someone you know are living at home or in a licensed care setting, obtaining and utilizing a lock box, safe or locked medication dispenser will go a long way toward preventing the theft of pills, debit/credit cards, cash and other items. A quick internet search or call to your local DHS office, senior center, or police department should provide you with any number of resources for such products.



# Adult Protective Services

Oregon Department of Human Services  
Seniors and People with Disabilities

## Purpose

- To provide protection and intervention for adults who are unable to protect themselves from abuse.
- The state shall... protect older and disabled citizens from physical and mental abuse and from fraudulent practices. ORS 410.020

## Eligibility Criteria

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- 65 or older.
- 18 or older and physically disabled.
- Any adult resident of a DHS licensed facility.
  - Assisted Living Facility, Residential Care Facility, Adult Foster Home or Nursing Home



# Types of Abuse

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- Abandonment
- Financial exploitation
- Neglect
- Physical abuse
- Emotional or verbal abuse
- Involuntary Seclusion
- Wrongful use of a physical or chemical restraint
- Sexual abuse
- Self-neglect

# Abandonment

- The desertion of a person by anyone who has assumed responsibility for the care or custody of that person

## Emotional or Verbal Abuse

Intentional infliction of anguish,  
distress or intimidation through  
verbal or non-verbal acts

Denial of rights

# Emotional or Verbal Abuse

continued...

- Includes threatening significant physical harm or causing emotional harm to an adult by use of:
  - Name calling, insults, ridicule, harassment, coercion, intimidation, mental cruelty or inappropriate sexual comments.
- Includes communication within hearing distance, regardless of the person's ability to comprehend it.

# Indicators of Emotional Abuse

- Tearfulness
- Agitation or anxiety
- Withdrawing from others
- Unexpected or unexplained changes in behavior
- Unusual physical or verbal outbursts

# Financial Exploitation



- The illegal or improper use of another person's resources, including funds, property or medication
- Often by means of deceit, coercion, undue influence or fraud
- Failure to use a person's funds for the benefit, support and maintenance of that person
- Applies even if both parties have a joint account.

# Financial Exploitation, continued

- Victim may be:
  - unaware of financial arrangements
  - Hesitant to discuss financial matters
  - Prohibited from speaking to others or making financial decisions
  - Coerced into withdrawing large amounts
  - Nervous or afraid of the person accompanying him or her
  - Isolated from others by exploiter

# Indicators of Financial Exploitation

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- Suspicious activity on bank accounts or credit cards
- New acquaintances
- Power of Attorney executed by a confused adult
- Redirected mail
- Bills unpaid, medications not picked up



## Neglect

- The failure of a caretaker to provide basic necessary care or services or failing to protect from abuse

# Indicators of Neglect

- Areas of possible neglect include:
  - Living conditions
  - Medical needs, including medication management
  - Nutrition, or
  - Hygiene

## Physical Abuse

- The use of physical force that may result in bodily injury, physical pain, or impairment.
- Any injury caused by other than accidental means.

# Indicators of Physical Abuse

- Fractures, bruising (particularly hand slap marks, pinch or grip marks), blisters, bite marks
- Burns, possibly caused by cigarettes, caustics or friction from ropes, etc.
- Any injury that doesn't fit with the given explanation of the injury.

# Indicators of Physical Abuse - continued

- Unexplained loss of weight
- Sleep disturbance
- Recoiling from physical contact
- Stress or anxiety in the presence of certain individuals
- Withdrawn/unresponsive
- Perpetrator describes person as uncooperative / ungrateful / unwilling to care for self
- Or, overmedicated

# Involuntary Seclusion

Involuntary seclusion of an elderly person, or person with developmental disability:

- for the convenience of a caregiver or
- to discipline the person

## Definition of Involuntary Seclusion

- Confinement or restriction of an adult to his or her room or a specified area; or
- Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

# Wrongful Use of a Restraint

Includes physical or chemical restraint of an elderly person or a person with a developmental disability

- Chemical restraint - the wrongful use of a medication or controlled substance for the purpose of sedation.
- Physical restraint - when used for convenience or discipline



# Permissible Uses of Restraint

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- Must be prescribed by a licensed physician, after a medical evaluation has been conducted
- There must be other interventions tried first and results documented
- When possible, resident must approve of the use (ie side rails on a bed)

# Indicators of problematic

## Caregiver Behaviors

- The person being cared for is not given the opportunity to speak for themselves out of the presence of the caregiver.
- Indifference toward the person they are caring for or inappropriate, over the top, displays of affections
- The caregiver is not allowing family and friends to visit
- Untreated wounds such as sores or rashes
- Unwillingness to work with outside agencies on behalf of the client

# Sexual Abuse

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- Non-consensual sexual contact or behavior
  - Especially with an adult who is incapable of consenting to sexual behavior due to a brain injury or other cognitive incapacity

# Indicators of Sexual Abuse

- Odd, misplaced comments about sex or sexual behavior
- Fear of certain people - scared or timid behavior
- Sleep disturbance
- Perpetrator may seem overly enthusiastic to carry out personal care tasks or to be alone with person
- Personal care tasks are taking longer to perform than usual.

## Self Neglect

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- The neglect of own personal care when a person is unable to understand the consequences of their actions or inactions.
- The neglect of property, bills or finances in general

# Indicators of Self-Neglect

- Inability to manage personal finances including hoarding or squandering assets, and/or failing to pay bills, leading to utilities shut off
- Inability to manage activities of daily living, including personal care, shopping, meal preparation and housework.
- Wandering, refusing medical attention, isolating self

# Indicators of Self-Neglect -

continued

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- Animal-infested living quarters resulting in a dangerous situation.
- Rashes, sores, fecal/urine smell, inadequate clothing, malnourishment, dehydration.
- Changes in intellectual functions, including disorientation, memory failure, incoherence.



## Informed Choice

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- Adults have the right to make informed choices that do not conform to societal norms as long as those decisions are not harmful to others.
- This includes the right to refuse assistance from APS.



# APS Process

- Screening
- Triage
- Assessment
- Investigation
- Intervention
- Documentation
- Risk Management

# Facility Investigations

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- All DHS licensed facilities
- Investigate to determine rule violations, as well as abuse/neglect
- Reports are public record
- Sanctions may be imposed by licensing board

# Community Investigations

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- Private homes
- We provide protection and intervention
- Confidential report is written
- Potential crimes are referred to law enforcement

# Facility APS

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- State Licensed Facilities in Deschutes, Jefferson and Crook Counties

- Nursing Homes - 6
- Adult Foster Homes - 78
- Residential Care Facilities - 10
- Assisted Living Facilities - 14

- As of February, 2012

# Interventions

- Referral to Community Partners
- Referral to DHS for State assistance (Medicaid)
- Involvement of family or friends
- Assistance w/ Relocation
- Assistance w/ initiating Power of Attorney or Rep Payee
- Assistance w/ obtaining a Restraining Order
- Guardianship / Conservatorship
- Victim may also refuse services or assistance from APS

## What we don't do

- Diagnose medical conditions
- Make decisions for a victim who has capacity to make own decisions
- Conduct criminal investigations
- Take an adult into "Protective Custody"

## Mandated Reporters

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- Physicians, NP, nurses, employees of an in-home health services
- Employees of DHS
- County health or mental health dept's.
- Member of the clergy
- Licensed clinical social worker
- Employees of any licensed facility while on duty

# Mandated Reporters –

continued

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- Physical, speech or occupational therapists
- Senior Center employees
- Information and referral or outreach workers
- Licensed counselor or marriage & family therapist.
- Any public official during official duties
- Police Officer, firefighter or EMT



# Confidentiality

- The identity of a person making a report of abuse is confidential.
- Identity of victims and witnesses are also kept confidential.
- Exceptions
  - Law Enforcement
  - Licensing Agencies & LTCO
  - Judicial Process

# Potential Criminal Charges

- Criminal mistreatment in the first degree. ORS 163.205
  - Maximum of 5 years prison \$125,000 fine
- Criminal mistreatment in the second degree. ORS 163.200
  - Maximum of 1 year jail \$6,250 fine
- Assault, Theft, Forgery, Harassment, etc.

# Civil Remedies

ORS 124.105

- A person who suffers injury, damage or death by reason of physical or financial abuse may bring an action against any person who has caused the physical or financial abuse or who has permitted another person to engage in physical or financial abuse.
  
- Victim can be awarded:
  - greater of: 3 times all economic damages or \$500
  - 3 times all non-economic damages up to \$500,000
  - attorney fees

 To make a report to APS


■ Central Oregon: 541- 693-2707

■ Fax 541-388-6118






■ Outside of Central Oregon: 800-  
232-3020

■ For immediate emergencies call 911





## Fraud Schemes Targeting Seniors



*Brought to you by  
Bend Police Department  
Presented by: Detective R.C. Bigelow*

## “The financial crime of the 21<sup>st</sup> Century”

- People 60 years and older made up 26% of all fraud complaints tracked by the Federal Trade Commission in 2012, the highest of any age group. In 2008, the level was just 10%, the lowest of any adult age group.

## Common types of Scams

- Health Care/Medicare/Health Insurance Fraud
- Counterfeit Prescription Drugs
- Funeral & Cemetery Scams
- Fraudulent Anti-Aging Products
- Telemarketing
- Internet Fraud
- Investment Schemes
- Sweepstakes & Lottery Scams
- Reverse Mortgage Scams

## Health Care/Medicare/Health Insurance Fraud

- **Medical Equipment Fraud:**
- Equipment manufacturers offer “free” products to individuals. Insurers are then charged for products that were not needed and/or may not have been delivered.
- **“Rolling Lab” Schemes:**
- Unnecessary and sometimes fake tests are given to individuals at health clubs, retirement homes, or shopping malls and billed to insurance companies or Medicare.
- **Services Not Performed:**
- Customers or providers bill insurers for services never rendered by changing bills or submitting fake ones.

## Medicare Fraud

- Senior citizens are frequent targets of Medicare schemes, especially by medical equipment manufacturers who offer seniors **free medical products in exchange for their Medicare numbers**. Because a physician has to sign a form certifying that equipment or testing is needed before Medicare pays for it, con artists fake signatures or bribe corrupt doctors to sign the forms. Once a signature is in place, the manufacturers bill Medicare for merchandise or service that was not needed or was not ordered.

## Medical Alert Scam

- With promises of a “free” medical alert system, the scam targeted seniors and caretakers and claimed to be offering the system free of charge because a family member or friend had already paid for it. In many cases, seniors were asked to provide their bank account or credit information to “verify” their identity and, as a result, were charged the monthly \$35 service fee. The system, of course, never arrived and the seniors were left with a charge they had trouble getting refunded.



## Tips for Avoiding Health Care Fraud or Health Insurance Fraud:

- Never sign blank insurance claim forms.
- Never give blanket authorization to a medical provider to bill for services rendered.
- Carefully review your insurer's explanation of the benefits statement. Call your insurer and provider if you have questions.
- Do not do business with door-to-door or telephone salespeople who tell you that services of medical equipment are free.
- Give your insurance/Medicare identification only to those who have provided you with medical services.

## Counterfeit Prescription Drugs

- Most commonly, counterfeit drug scams operate on the Internet.
- This scam is growing in popularity—since 2000, the FDA has investigated an average of 20 such cases per year, up from five a year in the 1990s.
- Ask about research that supports a product's claims — and possible risks or side effects. In addition, buy prescription drugs only from licensed U.S. pharmacies. Otherwise, you could end up with products that are fake, expired, or mislabeled — in short, products that could be dangerous to your health.

## Telemarketing

- With no face-to-face interaction, and no paper trail, these scams are incredibly hard to trace. Also, once a successful deal has been made, the buyer's name is then shared with similar schemers looking for targets, sometimes defrauding the same person repeatedly.

## Common Telemarketing Themes

- "You must act now, or the offer won't be good."
- "You've won a free gift, vacation, or prize." But you have to pay for "postage and handling" or other charges.
- "You must send money, give a credit card or bank account number, or have a check picked up by courier." You may hear this before you have had a chance to consider the offer carefully.
- "You don't need to check out the company with anyone." The callers say you do not need to speak to anyone, including your family, lawyer, accountant, local Better Business Bureau, or consumer protection agency.
- "You don't need any written information about the company or its references."
- "You can't afford to miss this high-profit, no-risk offer."
- "I just need to verify your information."

## Common Telemarketing Scams

- The Fake Accident Ploy:
- The con artist gets the victim to wire or send money on the pretext that the person's child or another relative is in the hospital and needs the money.

## Telemarketing Scams (cont.)

- Charity Scams:
- Money is solicited for fake charities. This often occurs after natural disasters. After a disaster, give only to established charities.
- In the aftermath of a disaster, give to an established charity, rather than one that has sprung up overnight. For more donating tips, check out [ftc.gov/charityfraud](http://ftc.gov/charityfraud).

## Telemarketing Scams (cont.)

- **The Grandparent Scam:**
- Scammers will place a call to an older person and when the victim picks up, they will say something along the lines of: "Hi Grandma, do you know who this is?" When the unsuspecting grandparent guesses the name of the grandchild the scammer most sounds like, the scammer has established a fake identity.
- Once "in," the fake grandchild will usually ask for money to solve some unexpected financial problem (overdue rent, payment for car repairs, etc.), to be paid via Western Union or MoneyGram. At the same time, the scam artist will beg the grandparent "please don't tell my parents, they would kill me."

## Telemarketing Scams (cont.)

- **Arrest Warrant Scam**
- In this scam, con artists are taking advantage of technology that can change what is visible on Caller ID, and allowing them to pose as the office of the local sheriff or other law enforcement agency. They call to say there is a warrant out for your arrest, but that you can pay a fine in order to avoid criminal charges. Of course, these "police" don't take credit cards; only a wire transfer or pre-paid debit card will do. Sometimes these scams seem very personal; the scammer may refer to a loan or other financial matter.

## Tips for Avoiding Telemarketing Fraud

- Don't buy from an unfamiliar company. Legitimate businesses understand that you want more information about their company and are happy to comply.
- Always ask for and wait until you receive written material about any offer or charity. If you get brochures about costly investments, ask someone whose financial advice you trust to review them. But, unfortunately, beware—not everything written down is true.
- Always check out unfamiliar companies with your local consumer protection agency, Better Business Bureau, state attorney general, the National Fraud Information Center, or other watchdog groups.

- Obtain a salesperson's name, business identity, telephone number, street address, mailing address, and business license number before you transact business. Some con artists give out false names, telephone numbers, addresses, and business license numbers. Verify the accuracy of these items.
- Don't pay in advance for services. Pay services only after they are delivered.
- Be wary of companies that want to send a messenger to your home to pick up money, claiming it is part of their service to you. In reality, they are taking your money without leaving any trace of who they are or where they can be reached.

- Always take your time making a decision. Legitimate companies won't pressure you to make a snap decision.
- Don't pay for a "free prize." If a caller tells you the payment is for taxes, he or she is violating federal law.
- Be sure to talk over big investments offered by telephone salespeople with a trusted friend, family member, or financial advisor. It's never rude to wait and think about an offer.
- Never send money or give out personal information such as credit card numbers and expiration dates, bank account numbers, dates of birth, or social security numbers to unfamiliar companies or unknown persons.

- If you have been victimized once, be wary of persons who call offering to help you recover your losses for a fee paid in advance.

## Internet Fraud

- Auction Fraud
- Debt Elimination
- Employment/Business opportunities
- Investment Fraud
- Ponzi/Pyramid
- Reshipping
- Spam
- Third Party receiver of Funds

## Lotteries

- The lottery scheme deals with persons randomly contacting email addresses advising them they have been selected as the winner of an International lottery. The Internet Crime Complaint Center has identified numerous lottery names being used in this scheme.
- An initial fee ranging from \$1,000 to \$5,000 is often requested to initiate the process and additional fee requests follow after the process has begun. These emails may also list a United States point of contact and address while also indicating the point of contact at a foreign address.

## How to minimize your risk

- If you get unsolicited email offers or spam, send the message to [spam@uce.gov](mailto:spam@uce.gov)
- If you get what looks like lottery material from a foreign country through the mail, contact your local postmaster.
- Go to [BBB Scamstopper](#). Sign up for Scam Alerts and learn about new scams as soon as the Better Business Bureau does.

## What to do if you are targeted

- Complaints can be filed with the Internet Fraud Complaint Center web page at [www.IC3.gov](http://www.IC3.gov)
- Contact your local F.B.I field office @ FBI Portland (503) 224-4181
- Contact the City of Bend Police Department @ (541) 693-6911





**LEGAL ISSUES IN VULNERABLE  
ADULT ABUSE CASES**

**Lisa N. Bertalan**

**I. HISTORY AND AMENDMENT OF ORS 124.100 et seq.**

A. Legislative History – 195 Or Laws Ch. 671.

B. Amendments and Retroactivity:

1. 1999 Amendment: Elimination of fiduciary requirement after *White vs. McCabe*, 159 Or. App. 189 (1999) (applied to causes of action arising on or after January 1, 2000).

2. 2001 Amendment: Added personal representatives of vulnerable persons to those with standing to bring a complaint. Also added trustee of trust where vulnerable person or spouse of vulnerable person is trustor.

3. 2003 Amendments: Addition of treble damages (effective for cases filed on or after January 1, 2004).

4. 2005 Amendments: Addition of phrase “vulnerable person” and addition of “person with disabilities” to those who are “vulnerable persons” (applied to conduct occurring on or after January 1, 2006), and addition to those who can bring an action of trustees for a trust on behalf of a trustor or the spouse of a trustor who is incapacitated or over 65 years of age (applied retroactively).

**II. BRINGING A CLAIM UNDER ORS 124.100 et. seq.**

A. Who May Bring a Claim?

1. Vulnerable person – 124.100(3)(a).

2. Guardian, conservator or attorney-in-fact – 124.100(3)(b).

3. Personal representative – 124.100(3)(c).

4. Trustee on behalf of trustor or trustor’s spouse – 124.100(3)(d).

B. Who are “Vulnerable Persons”?

1. Elderly – 124.100(1)(a). Age 65

2. Financially incapable – 124.100(1)(b); ORS 125.005(3).

3. Incapacitated – 124.100(1)(c); ORS 125.005(5); *c.f. Schaefer vs. Schaefer*, 183 Or. App. 513 (2002); *Herring vs. AMR, Multnomah County Case No.: 07-12-14914*.

4. Person with a Disability – 124.100(1)(d).

C. Actionable Conduct.

1. Financial abuse – *Church vs. Woods*, 190 Or. App. 112 (2003) (elements).

a. Taking or appropriation – *Church vs. Woods, id.*; *Hays vs. Hallberg*, 247 Fed. Appx. 865 (9<sup>th</sup> Cir. 2007)).

b. Retention – *Hoffart vs. Wiggins*, 226 Or. App. 545 (2009).

c. Money or property – See ORS 164.005(5) (“Property” means any article, substance or thing of value, including but not limited to money, tangible and intangible personal property, real property, choses in action, evidence of debt or of contract.”).

d. Wrongfulness – *Church vs. Woods*, 190 Or. App. 112 (2003).

2. Physical Abuse

a. Enumerated crimes (conviction not required) – ORS 124.105(1).

b. Unreasonable physical constraint – ORS 124.105(2).

c. Deprived of food or water – ORS 124.105(2).

d. Use of physical or chemical restraint, or psychotropic medication without prescription, or use to punish or for purposes not prescribed or for unauthorized time period – ORS 124.105(3).

D. Who Can be Sued?

1. Physical or financial abuser – ORS 124.105; ORS 124.110.

2. Responsible third parties – ORS 124.100(5). Attorney for fiduciary – *Evers vs. Troutman*, D.Or. CV 03-145-BR (Hon. Anna J. Brown, February 6, 2004); property owner and property manager – *Miller vs. Tabor West Investment Co.*, 223 Or. App. 700 (2008), *rev. den.* 346 Or. 184 (2009).

3. NOT certain entities and persons listed in ORS 124.115: financial institutions (ORS 706.008), health care facilities (ORS 442.015), group and adult foster care homes (ORS Chapter 443), and broker-dealers (ORS 59.005), unless the entity or person is convicted of a crime listed in ORS 124.105(1) or a crime arising from financially abusive conduct described in ORS 124.110.

4. Abuse and misuse? *E.g. Voth vs. America's Best Community Federal Credit Union, D. Or. CV 08-1052 MO (Hon. Michael Mosman, April 15, 2009) (inmate sued credit union for transferring funds to his inmate trust account where they were applied against his canteen debts).*

E. Remedies.

1. Economic and non-economic damages – ORS 124.110 (2)(a) and (b).
2. Treble economic and non-economic damages – *Id.*; ORS 124.120(1).
3. Equitable remedies – ORS 124.120(2)-(4); ORS 124.135.
4. Attorney fees – ORS 124.100(2)(c).
5. Fiduciary fees for conservator or guardian *ad litem* – ORS 124.100(2)(d).
6. Anything else – ORS 124.135. *E.g.* punitive damages per ORS 31.725 (except against health practitioners per ORS 31.740).

F. Other Provisions and Issues.

1. Statute of limitations – ORS 124.130; *See Landauer vs. Landauer, 221 Or. App. 19 (2008).*
2. Service on Attorney General – ORS 124.100(6).
3. Estoppel based on criminal conviction – ORS 124.140.
4. Court or jury? *See Goodyear Tire & Rubber Co. vs. Tualatin Tire & Auto, 322 Or. 406 (1995) and State vs. Louisiana Pacific Corporation, 166 Or. App. 205 (2000).*

### III. OVERCOMING PRIVILEGES AND STATUTORY PROTECTIONS TO OBTAIN DISCOVERY

A. DHS Confidentiality Laws – ORS 124.090, ORS 441.671, ORS 430.763, etc.; *See Kahn vs. Pony Express, 173 Or. App. 127, rev. den., 332 Or 518 (2001).*

B. HIPAA – 45 CFR §§ 160 and 164; *See* 45 CFR § 164.512(e) (Disclosures for judicial and administrative proceedings); *See also* ORS 192.520).



## ELDERLY PERSONS AND PERSONS WITH DISABILITIES ABUSE PREVENTION ACT

- 124.005 Definitions for ORS 124.005 to 124.040
- 124.010 Petition for relief; time limitation; information to be provided petitioner; exception
- 124.012 Filing of petitions; where contempt proceedings must be conducted
- 124.015 Hearing upon request of respondent; relief; settlement; effect of proceedings
- 124.020 Ex parte hearing; required findings; judicial relief; forms; request by respondent for hearing
- 124.022 Service of restraining order by sheriff; transmission by electronic communication device
- 124.024 Notice to be given by guardian petitioner
- 124.025 Removal of personal effects; accompanying peace officer; limitation on liability
- 124.030 Proof of service of restraining order to be delivered to sheriff; entry in LEDS; expiration of restraining order; release of respondent pending hearing
- 124.035 Renewal of restraining order
- 124.040 Short title

## REPORTING OF ABUSE

- 124.050 Definitions for ORS 124.050 to 124.095
- 124.055 Policy
- 124.060 Duty of officials to report; exception
- 124.065 Method of reporting; content; notice to law enforcement agency and to department
- 124.070 Duty to investigate; notice to law enforcement agency and department; written findings; review by district attorney
- 124.072 Required disclosure of protected health information to law enforcement agency; liability for disclosure
- 124.073 Training for abuse investigators
- 124.075 Immunity of person making report in good faith; identity confidential
- 124.077 Immunity for disclosure to prospective employer
- 124.080 Photographing of victim; photograph as record
- 124.085 Catalog of abuse records; confidentiality
- 124.090 Confidentiality of records; exceptions
- 124.095 Spiritual treatment not abuse

Note Oregon Elder Abuse Work Group--2012 c.70 §§23,24

## CIVIL ACTION FOR ABUSE OF VULNERABLE PERSON

124.100 Definitions for ORS 124.100 to 124.140; action authorized; relief; qualifications for bringing action; service on Attorney General

124.105 Physical abuse subject to action

124.110 Financial abuse subject to action

124.115 Persons not subject to action

124.120 Relief available

124.125 Action by Attorney General, Department of Human Services or district attorney; investigative demands

124.130 Statute of limitation

124.135 Remedies not exclusive

124.140 Estoppel based on criminal conviction

## PENALTIES

124.990 Criminal penalty

## ELDERLY PERSONS AND PERSONS WITH DISABILITIES ABUSE PREVENTION ACT

**124.005 Definitions for ORS 124.005 to 124.040.** As used in ORS 124.005 to 124.040:

(1) "Abuse" means one or more of the following:

(a) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(b) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(c) Abandonment, including desertion or willful forsaking of an elderly person or a person with a disability or the withdrawal or neglect of duties and obligations owed an elderly person or a person with a disability by a caregiver or other person.

(d) Willful infliction of physical pain or injury.

(e) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to the elderly person or person with a disability.

(f) Causing any sweepstakes promotion to be mailed to an elderly person or a person with a disability who had received sweepstakes promotional material in the United States mail, spent more than \$500 in the preceding year on any sweepstakes promotions, or any combination of sweepstakes promotions from the same service, regardless of the identities of the originators of the sweepstakes promotion and who represented to the court that the person felt the need for the court's assistance to prevent the person from incurring further expense.

(g) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with a disability to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with a disability to believe that the threat will be carried out.

(h) Sexual contact with a nonconsenting elderly person or person with a disability or with an elderly person or person with a disability considered incapable of consenting to a sexual act as described in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning given that term in ORS 163.305.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Guardian petitioner" means a guardian or guardian ad litem for an elderly person or a person with a disability who files a petition under ORS 124.005 to 124.040 on behalf of the elderly person or person with a disability.

(4) "Interfere" means to interpose in a way that hinders or impedes.

(5) "Intimidate" means to compel or deter conduct by a threat.

- (6) "Menace" means to act in a threatening manner.
- (7) "Molest" means to annoy, disturb or persecute with hostile intent or injurious effect.
- (8) "Person with a disability" means a person described in:
  - (a) ORS 410.040 (7); or
  - (b) ORS 410.715.
- (9) "Petitioner" means an elderly person or a person with a disability who files a petition under ORS 124.005 to 124.040.
  - (10) "Sweepstakes" means:
    - (a) A procedure for awarding a prize that is based on chance;
    - (b) A procedure in which a person is required to purchase anything, pay anything of value or make a donation as a condition of winning a prize or of receiving or obtaining information about a prize; or
    - (c) A procedure that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or receiving or obtaining information about a prize.
  - (11) "Sweepstakes promotion" means an offer to participate in a sweepstakes. [1995 c.666 §§3,3a; 1999 c.738 §1; 1999 c.875 §6; 2003 c.257 §1a; 2003 c.264 §1; 2005 c.671 §1; 2007 c.70 §24; 2011 c.36 §2]

**124.010 Petition for relief; time limitation; information to be provided petitioner; exception.** (1)(a) Except as provided in subsection (8) of this section, an elderly person or a person with a disability who has been the victim of abuse within the preceding 180 days or a guardian or guardian ad litem of an elderly person or a person with a disability who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 124.005 to 124.040, if the person is in immediate and present danger of further abuse from the abuser.

(b) The elderly person or person with a disability or the guardian or guardian ad litem of the person may seek relief by filing a petition with the circuit court alleging that the person is in immediate and present danger of further abuse from the respondent, alleging that the person has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and describing the nature of the abuse and the approximate dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition.

(c) A petitioner or guardian petitioner is not required to provide in the petition information regarding the relationship between the elderly person or person with a disability and the respondent.

(d) Allegations in the petition must be made under oath or affirmation. The circuit court has jurisdiction over all proceedings under ORS 124.005 to 124.040.

(2) The petitioner or guardian petitioner has the burden of proving a claim under ORS 124.005 to 124.040 by a preponderance of the evidence.

(3) The right to petition for relief under ORS 124.005 to 124.040 is not affected by the fact that the elderly person or person with a disability has left the residence or household to avoid abuse.

(4) A petition filed under ORS 124.005 to 124.040 must disclose the existence of any Elderly Persons and Persons With Disabilities Abuse Prevention Act proceedings, any Abuse Prevention Act proceedings, any marital annulment, dissolution or separation proceedings pending between the parties or any protective proceedings under ORS chapter 125.

(5) Upon the filing of a petition under ORS 124.005 to 124.040, the clerk of the court shall give the petitioner or guardian petitioner information provided by the Department of Human Services about local adult protective services, domestic violence shelters and local legal services available.

(6) For purposes of computing the 180-day period in this section and ORS 124.020, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the elderly person or person with a disability is not counted as part of the 180-day period.

(7) If a guardian or guardian ad litem files a petition under this section on behalf of an elderly person or a person with a disability, the elderly person or person with a disability retains the right to:

- (a) Contact and retain counsel;
- (b) Have access to personal records;
- (c) File objections to the restraining order;
- (d) Request a hearing; and
- (e) Present evidence and cross-examine witnesses at any hearing.

(8) An elderly person or a person with a disability may not file a petition under ORS 124.005 to 124.040 against a guardian or conservator for the person. [1995 c.666 §4; 1999 c.738 §2; 1999 c.1052 §11; 2003 c.257 §2a; 2003 c.264 §2; 2005 c.671 §2; 2007 c.70 §25]



**124.012 Filing of petitions; where contempt proceedings must be conducted.** A petition under ORS 124.010 may be filed only in a county in which the petitioner or respondent resides. Any contempt proceedings for violation of a restraining order issued under ORS 124.005 to 124.040 must be conducted by the court that issued the order, or by the circuit court for a county in which a violation of the restraining order occurs. If contempt proceedings are initiated in the circuit court for a county in which a violation of the restraining order occurs, the person initiating the contempt proceedings shall file with the court a copy of the restraining order, certified by the clerk of the court that issued the order. Upon filing of the certified copy of the restraining order, the court shall enforce the order as though that court had issued the order. [2003 c.289 §4]

**124.015 Hearing upon request of respondent; relief; settlement; effect of proceedings.** (1) The court shall hold a hearing within 21 days following the request, and may cancel or change any order issued under ORS 124.020 if the respondent, elderly person or person with a disability requests a hearing pursuant to ORS 124.020 (9).

(2) In addition to the relief granted under ORS 124.020, the court, in a hearing held pursuant to subsection (1) of this section, may:

(a) Require either party to move from any residence whose title or right to occupy such premises is held jointly by the parties; and

(b) Assess against any party reasonable attorney fees and such costs as may be incurred in the hearing.

(3)(a) If the respondent is represented by an attorney, time for the hearing may be extended for up to five days at the request of the petitioner or guardian petitioner so that the petitioner or guardian petitioner may seek representation.

(b) If the elderly person or person with a disability is represented by an attorney, time for the hearing may be extended for up to five days at the request of the respondent or guardian petitioner so that the respondent or guardian petitioner may seek representation.

(4) The court may approve any consent agreement to bring about a cessation of abuse of the parties. However, the court may not approve a term in a consent agreement that provides for restraint of a party to the agreement unless the other party petitioned for and was granted an order under ORS 124.010. An order or consent agreement made under this section may be amended at any time and shall continue in effect for a period of one year from the date of the order issued under ORS 124.020.

(5) An order or agreement made under ORS 124.005 to 124.040 or ORS 133.310 and 133.381 may not in any manner affect title to any real property.

(6) No undertaking shall be required in any proceeding under ORS 124.005 to 124.040.

(7) Any proceeding under ORS 124.005 to 124.040 shall be in addition to and not in lieu of any other available civil or criminal remedies.

(8) Notwithstanding any right or remedy established in ORS chapter 90 or ORS 105.105 to 105.168, a petitioner or guardian petitioner may enforce an order issued under ORS 124.005 to 124.040. [1995 c.666 §§5,5a; 2003 c.257 §3a; 2005 c.671 §9; 2007 c.70 §26]

**124.020 Ex parte hearing; required findings; judicial relief; forms; request by respondent for hearing.** (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the elderly person or person with a disability named in the petition has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition and that there is an immediate and present danger of further abuse to the person, the court shall, if requested by the petitioner or guardian petitioner, order, for a period of one year or until the order is withdrawn or amended, whichever is sooner:

(a) That the respondent be required to move from the residence of the elderly person or person with a disability, if in the sole name of the person or if jointly owned or rented by the person and the respondent, or if the parties are married to each other;

(b) That a peace officer accompany the party who is leaving or has left the parties' residence to remove essential personal effects of the party;

(c) That the respondent be restrained from abusing, intimidating, molesting, interfering with or menacing the elderly person or person with a disability, or attempting to abuse, intimidate, molest, interfere with or menace the person;

(d) That the respondent be restrained from entering, or attempting to enter, on any premises when it appears to the court that such restraint is necessary to prevent the respondent from abusing, intimidating, molesting, interfering with or menacing the elderly person or person with a disability;

(e) That the respondent be:

(A) Restrained, effective on a date not less than 150 days from the date of the order, from mailing the elderly person or person with a disability any sweepstakes promotion;

(B) Required to remove the elderly person or person with a disability from the respondent's sweepstakes promotion mailing list or place the person on a list of persons to whom sweepstakes promotions may not be mailed; and

(C) Required to promptly refund any payment received in any form from the elderly person or person with a disability after the date the order is entered by the court; or

(f) Except as provided in subsection (2) of this section, other relief that the court considers necessary to provide for the safety and welfare of the elderly person or person with a disability.

(2)(a) If the court finds that the elderly person or person with a disability has been the victim of abuse as defined in ORS 124.005 (1)(g), the court may order only relief that the court considers necessary to prevent or remedy the wrongful taking or appropriation of the money or property of the person, including but not limited to:

(A) Directing the respondent to refrain from exercising control over the money or property of the person;

(B) Requiring the respondent to return custody or control of the money or property of the person to the person;

(C) Requiring the respondent to follow the instructions of the guardian or conservator of the person; or

(D) Prohibiting the respondent from transferring the money or property of the elderly person or person with a disability to any person other than the elderly person or person with a disability.

(b) The court may not use a restraining order issued under ORS 124.005 to 124.040:

(A) To allow any person other than the elderly person or person with a disability to assume responsibility for managing any of the money or property of the elderly person or person with a disability; or

(B) For relief that is more appropriately obtained in a protective proceeding filed under ORS chapter 125 including, but not limited to, giving control and management of the financial accounts or property of the elderly person or person with a disability for any purpose other than the relief granted under paragraph (a) of this subsection.

(3) The showing required under subsection (1) of this section may be made by testimony of:

(a) The elderly person or person with a disability;

(b) The guardian or guardian ad litem of the elderly person or person with a disability;

(c) Witnesses to the abuse; or

(d) Adult protective services workers who have conducted an investigation.

(4) Immediate and present danger under this section includes but is not limited to situations in which the respondent has recently threatened the elderly person or person with a disability with additional abuse.

(5) When a guardian petitioner files a petition on behalf of an elderly person or a person with a disability, the guardian petitioner shall provide information about the person and not about the guardian petitioner where the petition, order or related forms described in subsection (6) of this section require information about the petitioner.

(6) An instruction brochure shall be available from the clerk of the court explaining the rights set forth under ORS 124.005 to 124.040. The petition, order and related forms shall be available from the clerk of the court and shall be in substantially the following form:

---

IN THE CIRCUIT COURT OF  
 THE STATE OF OREGON FOR  
 THE COUNTY OF \_\_\_\_\_

_____,	)	PETITION FOR
Petitioner	)	RESTRAINING ORDER
(your name)	)	TO PREVENT ABUSE
	)	OF ELDERLY
	)	PERSONS OR
	)	PERSONS WITH
vs.	)	DISABILITIES
	)	
	)	NO. _____
_____	)	
Respondent	)	
(person to be	)	
restrained)	)	

YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CONTEMPT OF COURT.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

ATTACH ADDITIONAL PAGES IF NECESSARY.

I am the Petitioner and I state that the following information is true:

I am a resident of \_\_\_\_\_ County, Oregon.

Respondent is a resident of \_\_\_\_\_ County, Oregon.

I am either 65 years of age or older (I am \_\_\_\_\_ years of age) or I am a person with a disability (CIRCLE THE ONE THAT DESCRIBES YOU).

1. CHECK AND FILL OUT ANY SECTION(S) that apply to you and respondent:

- A. Respondent and I have been living together since \_\_\_\_\_, \_\_\_ (year).
- B. Respondent and I lived together from \_\_\_\_\_, \_\_\_ (year), to \_\_\_\_\_, \_\_\_ (year).
- C. I have been under the care of respondent since \_\_\_\_\_, \_\_\_ (year).
- D. I was under the care of respondent from \_\_\_\_\_, \_\_\_ (year), to \_\_\_\_\_, \_\_\_ (year).
- E. Respondent has sent me sweepstakes promotions.
- F. None of the above.

2. To qualify for a restraining order, respondent must have done one or more of the following:

Within the last 180 days, respondent has:

- A. Caused me physical injury by other than accidental means.
- B. Attempted to cause me physical injury by other than accidental means.
- C. Placed me in fear of immediate serious physical injury.
- D. Caused me physical harm by withholding services necessary to maintain my health and well-being.
- E. Abandoned or deserted me by withdrawing or neglecting to perform duties and obligations.
- F. Used derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to place me in fear of significant physical or emotional harm.
- G. Sent me sweepstakes promotions, and I feel the need for the court's assistance to protect me from further expense. I am an elderly person or a person with a disability. In the past year, I spent more than \$500 on sweepstakes promotions that I received in the United States mail.
- H. Wrongfully taken or appropriated my money or property, or alarmed me by conveying a threat to me that my money or property would be wrongfully taken or appropriated, which I reasonably believed would be carried out.
- I. Had nonconsensual sexual contact with me or sexual contact to which I was incapable of consenting.

NOTICE TO PETITIONER: Sweepstakes companies are allowed up to 150 days to stop sending you sweepstakes entry materials. For a time after the court issues a restraining order, you may receive additional solicitations from respondent. However, beginning on the date the restraining order is issued, the respondent must immediately reject any further orders from you and must return any money you send to the company after the date the restraining order is issued.

3. Any period of time after the abuse occurred during which respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home is not counted as part of the 180-day period, and you may still be eligible for a restraining order.

Respondent was incarcerated from \_\_\_\_\_, \_\_\_ (year), to \_\_\_\_\_, \_\_\_ (year).

Respondent lived more than 100 miles from my home from \_\_\_\_\_, \_\_\_ (year), to \_\_\_\_\_, \_\_\_ (year).

4. Did the abuse happen within the last 180 days not including the times respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home? Yes No

Date and location of abuse:

\_\_\_\_\_

\_\_\_\_\_

How did respondent injure or threaten to injure you?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Are there incidents other than those described in question 4 above, in which respondent injured or threatened to injure you? If yes, explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. The abuse I am complaining about was witnessed by \_\_\_\_\_ (affidavit attached). Other persons with knowledge of the abuse are \_\_\_\_\_ (affidavit attached).

7. I am in immediate and present danger of further abuse by respondent because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. In any of the above incidents:

Were drugs, alcohol or weapons involved? Yes No

Did you need medical help? Yes No

Were the police or the courts involved? Yes No

If you have circled yes to any of the above questions, explain:

\_\_\_\_\_  
\_\_\_\_\_

9. A. There (is) (is not) another Elderly Persons and Persons With Disabilities Abuse Prevention Act or Abuse Prevention Act proceeding pending between respondent and me. It is filed in \_\_\_\_\_ (County), \_\_\_\_\_ (State), and I am (Petitioner) or (Respondent) in that case.

The case number of the case is: \_\_\_\_\_

B. There (is) (is not) another lawsuit pending between respondent and me for divorce, annulment or legal separation.

If yes, type of lawsuit: \_\_\_\_\_

It is filed in \_\_\_\_\_ (County), \_\_\_\_\_ (State).

C. There (is) (is not) a protective proceeding filed in \_\_\_\_\_ (County), \_\_\_\_\_ (State).

10. Respondent may be required to move from your residence if it is in your sole name, or if it is jointly owned or rented by you and respondent, or if you and respondent are married.

I (do) (do not) want respondent to move from my residence.

My residence is:

Owned Leased Rented

By: \_\_\_\_\_

PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S REQUEST" COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.

\_\_\_\_\_  
PETITIONER MUST NOTIFY THE COURT OF ANY CHANGE OF ADDRESS.

ALL NOTICES OF HEARING WILL BE SENT TO THIS ADDRESS AND DISMISSALS MAY BE ENTERED IF YOU DO NOT APPEAR AT A SCHEDULED HEARING.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

\_\_\_\_\_

PETITIONER

STATE OF OREGON )
)
County of \_\_\_\_\_ ) ss.

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_.

NOTARY PUBLIC FOR OREGON

My commission expires: \_\_\_\_\_

RELEVANT DATA

RESPONDENT \_\_\_\_\_

Sex \_\_\_ Telephone # \_\_\_\_\_
Residence Address \_\_\_\_\_
City/State/Zip \_\_\_\_\_
County \_\_\_\_\_
Birthdate \_\_\_\_\_ Age \_\_\_\_\_
Race \_\_\_\_\_
Height \_\_\_\_\_ Weight \_\_\_\_\_
Eye Color \_\_\_\_\_
Hair Color \_\_\_\_\_

PETITIONER (you) \_\_\_\_\_ GUARDIAN PETITIONER

Sex \_\_\_\_\_ \*Telephone # \_\_\_\_\_ Name \_\_\_\_\_
\*Residence Address \_\_\_\_\_ Address \_\_\_\_\_
City/State/Zip \_\_\_\_\_
County \_\_\_\_\_ Telephone # \_\_\_\_\_
Birthdate \_\_\_\_\_ Age \_\_\_\_\_
Race \_\_\_\_\_
Height \_\_\_\_\_ Weight \_\_\_\_\_
Eye Color \_\_\_\_\_
Hair Color \_\_\_\_\_

\*If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

PLEASE FILL OUT THIS INFORMATION TO AID IN SERVICE OF THE RESTRAINING ORDER

Where is respondent most likely to be located?

Residence Hours \_\_\_\_\_
Employment Hours \_\_\_\_\_
Address: \_\_\_\_\_

Employment Hours \_\_\_\_\_
Address: \_\_\_\_\_

Description of vehicle \_\_\_\_\_

Does respondent have any weapons or access to weapons? Explain:

Has respondent ever been arrested for or convicted of a violent crime? Explain:

Is there anything about respondent's character, past behavior or the present situation that indicates that respondent may be a danger to self or others? Explain:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 IN THE CIRCUIT COURT OF  
 THE STATE OF OREGON  
 FOR THE COUNTY OF \_\_\_\_\_

_____ )	
Petitioner )	
(your name) )	RESTRAINING ORDER
)	TO PREVENT ABUSE
)	OF ELDERLY PERSONS
vs. )	OR PERSONS WITH
)	DISABILITIES
)	
)	NO. _____
_____ )	
Respondent )	
(person to be restrained) )	
)	

TO THE RESPONDENT:  
 VIOLATION OF THIS RESTRAINING ORDER MAY RESULT IN YOUR ARREST AND IN CIVIL AND/OR CRIMINAL PENALTIES. REVIEW THIS ORDER CAREFULLY. EACH PROVISION MUST BE OBEYED. SEE YOUR RIGHTS TO A HEARING.

The Court, having reviewed the petition, makes the following findings:

Judge's Initials

- Petitioner has been abused by respondent as defined by ORS 124.005;
- The abuse of petitioner by respondent occurred within the last 180 days as provided in ORS 124.010;
- There is an immediate and present danger of further abuse to petitioner.

IT IS HEREBY ORDERED that:

Petitioner's Request

Judge's Initials

- |  |       |
|--|-------|
| <input type="checkbox"/> 1. Respondent is restrained (prohibited) from intimidating, molesting, interfering with or menacing petitioner, or attempting to intimidate, molest, interfere with or menace petitioner.   | _____ |
| <input type="checkbox"/> 2. Respondent is restrained (prohibited) from entering, or attempting to enter:<br>(Include names and address unless withheld for safety reasons.)  | _____ |
| <input type="checkbox"/> Petitioner's residence.   | _____ |
| <input type="checkbox"/> Petitioner's business or place of employment.   | _____ |
| <input type="checkbox"/> Petitioner's school.  | _____ |
| <input type="checkbox"/> Other locations.  | _____ |
| <input type="checkbox"/> 3. Respondent is restrained (prohibited) from:  |       |
| <input type="checkbox"/> Contacting, or attempting to contact, petitioner by telephone.  | _____ |
| <input type="checkbox"/> Contacting, or attempting to contact, petitioner by mail.   | _____ |
| <input type="checkbox"/> 4. Respondent shall move from and not return to the residence located at _____ except with a peace officer in order to remove essential personal effects of the respondent, including, but not limited to: clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade. | _____ |
| <input type="checkbox"/> 5. A peace officer shall accompany the petitioner to the parties' residence in order to remove essential personal effects of petitioner, including, but not limited to: clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade.                                    | _____ |
| <input type="checkbox"/> 6. Beginning on a date not less than 150 days from the date of this order, the respondent shall not mail the petitioner any further sweepstakes promotions.   | _____ |
| <input type="checkbox"/> 7. Respondent shall remove the petitioner from _____  | _____ |

the respondent's sweepstakes promotion mailing list or shall place the petitioner on the respondent's list of persons to whom sweepstakes promotions may not be mailed.

[ ] 8. Respondent shall refund any payment received \_\_\_\_\_  
in any form from the petitioner after the date this order is entered by the court.

[ ] 9. Other relief: \_\_\_\_\_

[ ] 10. No further service is necessary because respondent \_\_\_\_\_  
appeared in person before the Court.

IT IS FURTHER ORDERED that:

SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS \$5,000 unless otherwise specified.

Other Amount (\$ )

THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR A PERIOD OF ONE YEAR OR UNTIL THE ORDER IS VACATED, MODIFIED OR SUPERSEDED, WHICHEVER OCCURS FIRST.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2\_\_.

\_\_\_\_\_  
CIRCUIT COURT JUDGE (signature)

\_\_\_\_\_  
CIRCUIT COURT JUDGE (printed)

\_\_\_\_\_  
IN THE CIRCUIT COURT OF  
THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

)  
\_\_\_\_\_, ) NO. \_\_\_\_\_  
Petitioner, )  
vs. ) AFFIDAVIT OF PROOF  
\_\_\_\_\_, ) OF SERVICE  
Respondent. )  
)  
)  
STATE OF )  
OREGON )  
) ss.  
County of \_\_\_ )

I am a resident of the State of Oregon. I am a competent person 18 years of age or older. I am not an attorney for or a party to this case, or an officer, director or employee of any party to this case.

On the \_\_\_\_ day of \_\_\_\_\_, 2\_\_, I served the Restraining Order to Prevent Abuse of Elderly Persons or Persons With Disabilities and the Petition for Restraining Order to Prevent Abuse of Elderly Persons or Persons With Disabilities in this case personally upon the above-named respondent in \_\_\_\_\_ County by delivering to the respondent a copy of those papers, each of which was certified to be a true copy of each original.

Signature of \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
IN THE CIRCUIT COURT OF

THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_, )  
Petitioner, ) NO. \_\_\_\_\_  
vs. )  
\_\_\_\_\_, ) MOTION AND ORDER  
Respondent. ) OF DISMISSAL  
)

Comes now petitioner, \_\_\_\_\_, and moves this Court for an order allowing the voluntary withdrawal and dismissal of the Restraining Order on file herein.

\_\_\_\_\_  
Petitioner  
SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_  
IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
JUDGE

\_\_\_\_\_  
IN THE CIRCUIT COURT OF  
THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_, )  
(D.O.B. \_\_\_\_\_) ) NOTICE TO RESPONDENT  
Petitioner, ) (Elderly Persons and  
) (Persons With Disabilities  
) (Abuse Prevention Act)  
)  
and ) NO. \_\_\_\_\_  
)  
\_\_\_\_\_, )  
(D.O.B. \_\_\_\_\_) )  
Respondent. )

THIS FORM MUST BE ATTACHED TO SERVICE COPY OF RESTRAINING ORDER TO RESPONDENT: A TEMPORARY RESTRAINING ORDER HAS BEEN ISSUED BY THE COURT WHICH AFFECTS YOUR RIGHTS AND IS NOW IN EFFECT. THIS ORDER BECOMES EFFECTIVE IMMEDIATELY. IF YOU WISH TO CONTEST THE CONTINUATION OF THIS ORDER, YOU MUST COMPLETE THIS FORM AND MAIL OR DELIVER IT TO:  
REQUESTS FOR HEARING MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THE ORDER. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR REQUEST FOR A HEARING. THE HEARING WILL BE HELD WITHIN 21 DAYS. AT THE HEARING, A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR CHANGED. THE ONLY PURPOSE OF THIS HEARING WILL BE TO DETERMINE IF THE TERMS OF THE COURT'S TEMPORARY ORDER SHOULD BE CANCELED, CHANGED OR EXTENDED.  
Keep in mind that this order remains in effect until the court that issued the order modifies or dismisses it. If you are arrested for violating this order, the security amount (bail) is \$5,000, unless a different amount is ordered by the court. Violation of this order constitutes contempt of court and is punishable by a fine of up to \$500 or one percent of your annual gross income, whichever is greater, a jail term of up to six months, or both. Other sanctions may be imposed.

\_\_\_\_\_  
REQUEST FOR HEARING



I am the Respondent in the above-referenced action and I request a hearing to contest all or part of the order as follows (mark one or more):

- The order restraining me from contacting, or attempting to contact, the petitioner.
- Other \_\_\_\_\_

I (will) (will not) be represented by an attorney at the hearing.

Notice of the time and place of the hearing can be mailed to me at the address below my signature.

Date: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF RESPONDENT

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER

(7) If the court orders relief:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to effect service and shall have a true copy of the petition and order delivered to the county sheriff for service upon the respondent, unless the court finds that further service is unnecessary because the respondent appeared in person before the court.

(b) The county sheriff shall serve the respondent personally unless the petitioner or guardian petitioner elects to have the respondent served personally by a private party or by a peace officer who is called to the scene of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of the order within a reasonable amount of time. Proof of service shall be made in accordance with ORS 124.030.

(c) A respondent accused of committing abuse by means of a sweepstakes promotion may be served:

(A) Personally;

(B) By mailing certified true copies of the petition and order by certified mail to the address to which the elderly person or person with a disability would have sent the payment for goods or services promoted in the sweepstakes promotion had the elderly person or person with a disability been ordering the goods or services; or

(C) In the manner directed by the court.

(d) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under ORS 124.005 to 124.040.

(8) If the county sheriff:

(a) Determines that the order and petition are incomplete, the order and petition shall be returned to the clerk of the court. The clerk of the court shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or guardian petitioner, of the error or omission.

(b) After accepting the order and petition, cannot complete service within 10 days, the sheriff shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or guardian petitioner, that the documents have not been served. If the petitioner or guardian petitioner does not respond within 10 days, the county sheriff shall hold the order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(9)(a) Within 30 days after a restraining order is served on the respondent under this section or within 30 days after notice is served on the elderly person or person with a disability under ORS 124.024, the respondent, elderly person or person with a disability may request a court hearing upon any relief granted. The hearing request form shall be available from the clerk of the court and shall be in substantially the form provided in subsection (6) of this section.

(b) If the respondent, elderly person or person with a disability requests a hearing under paragraph (a) of this subsection, the clerk of the court shall notify the petitioner or guardian petitioner of the date and time of such hearing, and shall supply the petitioner or guardian petitioner with a copy of the request for a hearing. The petitioner or guardian petitioner shall give to the clerk of the court information sufficient to allow such notification.

(c) The hearing is not limited to the issues raised in the request for hearing form and may include testimony from witnesses to the abuse and adult protective services workers. The hearing may be held in person or by telephone. If the respondent, elderly person or person with a disability seeks to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a response to the issue.

(d) The court shall exercise its discretion in a manner that protects the elderly person or person with a disability from traumatic confrontation with the respondent. [1995 c.666 §§6,6a; 1997 c.249 §40; 1997 c.863 §5; 1999 c.738 §3; 1999 c.875 §7; 2003 c.257 §4a; 2003 c.264 §3; 2005 c.22 §97; 2005 c.671 §3; 2007 c.70 §27]

**124.022 Service of restraining order by sheriff; transmission by electronic communication device.** (1) A sheriff may serve a restraining order issued under ORS 124.020 in the county in which the sheriff was elected and in any county that is adjacent to the county in which the sheriff was elected.

(2) A sheriff may serve and enter into the Law Enforcement Data System a copy of a restraining order under ORS 124.020 that was transmitted to the sheriff by a court or law enforcement agency using an electronic communication device. Before transmitting a restraining order to a sheriff under this subsection by telephonic facsimile or electronic mail, the person sending the copy must receive confirmation from the sheriff's office that an electronic communication device is available and operating. For purposes of this subsection, "electronic communication device" means a device by which any kind of electronic communication can be made, including but not limited to communication by telephonic facsimile and electronic mail. [2003 c.304 §12; 2007 c.255 §9; 2011 c.269 §4]

**124.024 Notice to be given by guardian petitioner.** (1) A guardian petitioner must give notice of the petition, order and related forms described in ORS 124.020 (6) to the elderly person or person with a disability named in the petition.

(2) The guardian petitioner must also serve on the elderly person or person with a disability a notice that contains a statement of the rights of the person as follows:

- (a) The right to contact and retain counsel;
- (b) The right to have access to personal records;
- (c) The right to file objections to the restraining order;
- (d) The right to request a hearing to contest all or part of the restraining order; and
- (e) The right to present evidence and cross-examine witnesses at any hearing.

(3) Notice provided under subsection (1) of this section must be similar to the notice provided to the respondent under ORS 124.020 (6) and must contain an objection form that the elderly person or person with a disability may complete and mail to the court.

(4) Notice under this section must be personally served on the elderly person or person with a disability. The date of personal service must be not later than 72 hours after the court issues a restraining order under ORS 124.020.

(5) Proof of service under this section must be filed in the proceeding before the court holds a hearing under ORS 124.015. [2003 c.257 §7; 2003 c.257 §7a; 2005 c.671 §10; 2007 c.70 §28]

**124.025 Removal of personal effects; accompanying peace officer; limitation on liability.** (1) A peace officer who accompanies a party removing essential personal effects pursuant to an order issued under ORS 124.020 shall remain for up to 20 minutes and may temporarily interrupt the removal of property at any time. Nothing in this subsection shall affect a peace officer's duty to arrest under ORS 133.055 and 133.310.

(2) The party removing essential personal effects from the residence pursuant to an order issued under ORS 124.020 is entitled to be accompanied by a peace officer on one occasion only.

(3) A peace officer who accompanies a party removing essential personal effects pursuant to an order issued under ORS 124.020 shall have immunity from any liability, civil or criminal, for any actions of the party committed during the removal of essential personal effects. [1995 c.666 §7]

**124.030 Proof of service of restraining order to be delivered to sheriff; entry in LEDS; expiration of restraining order; release of respondent pending hearing.** (1) Whenever a restraining order, as authorized by ORS 124.015 or 124.020, that includes a security amount and an expiration date pursuant to ORS 124.015 and 124.020 and this section, is issued and the person to be restrained has actual notice of the order, the clerk of the court or any other person serving the petition and order shall immediately deliver to a county sheriff a true copy of the affidavit of proof of service, on which it is stated that personal service of the petition and order was served on the respondent, and copies of the petition and order. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for service of the order and an affidavit of proof of service is waived. Upon receipt of a copy of the order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police. If the petition and order were served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System upon receipt of a true copy of the affidavit of proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of

the order may be informed of the existence and terms of the order. The order is fully enforceable in any county in this state.

(2)(a) A restraining order shall remain in effect until the order expires or is terminated by court order.

(b) When a restraining order has been entered under ORS 124.020, the restraining order shall not be terminated upon a motion for dismissal by the petitioner or guardian petitioner unless the motion is notarized.

(3) In any situation where a restraining order described in subsection (1) of this section is terminated before the expiration date, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System.

(4) Pending a contempt hearing for an alleged violation of a restraining order issued under ORS 124.015 or 124.020, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Whenever a restraining order is issued under ORS 124.015 or 124.020, the issuing court shall set a security amount for the violation of the order. [1995 c.666 §8; 2003 c.257 §5; 2007 c.255 §10; 2011 c.269 §5]

**124.035 Renewal of restraining order.** For good cause shown, the court may renew an order entered under ORS 124.015 or 124.020, and the court may do so regardless of whether there has been a further act of abuse. [1995 c.666 §9]

**124.040 Short title.** ORS 124.005 to 124.040 shall be known and may be cited as the “Elderly Persons and Persons With Disabilities Abuse Prevention Act.” [1995 c.666 §2; 1999 c.738 §4; 2003 c.264 §4]

## REPORTING OF ABUSE

**124.050 Definitions for ORS 124.050 to 124.095.** As used in ORS 124.050 to 124.095:

(1) “Abuse” means one or more of the following:

(a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury upon an elderly person.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) “Elderly person” means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) “Facility” means:

(a) A long term care facility as that term is defined in ORS 442.015.

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) “Financial exploitation” means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) “Intimidation” means compelling or deterring conduct by threat.

(6) “Law enforcement agency” means:

- (a) Any city or municipal police department.
  - (b) Any county sheriff's office.
  - (c) The Oregon State Police.
  - (d) Any district attorney.
  - (e) A police department established by a university under ORS 352.383 or 353.125.
  - (7) "Neglect" means:
    - (a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical harm or significant emotional harm to the elderly person; or
    - (b) The failure of a caregiver to make a reasonable effort to protect an elderly person from abuse.
  - (8) "Person with a disability" means a person described in:
    - (a) ORS 410.040 (7); or
    - (b) ORS 410.715.
  - (9) "Public or private official" means:
    - (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician, or chiropractor, including any intern or resident.
    - (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.
    - (c) Employee of the Department of Human Services or community developmental disabilities program.
    - (d) Employee of the Oregon Health Authority, county health department or community mental health program.
    - (e) Peace officer.
    - (f) Member of the clergy.
    - (g) Regulated social worker.
    - (h) Physical, speech or occupational therapist.
    - (i) Senior center employee.
    - (j) Information and referral or outreach worker.
    - (k) Licensed professional counselor or licensed marriage and family therapist.
    - (L) Any public official who comes in contact with elderly persons in the performance of the official's official duties.
    - (m) Firefighter or emergency medical services provider.
    - (n) Psychologist.
    - (o) Provider of adult foster care or an employee of the provider.
    - (p) Audiologist.
    - (q) Speech-language pathologist.
  - (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.
  - (11)(a) "Sexual abuse" means:
    - (A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;
    - (B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;
    - (C) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver;
    - (D) Any sexual contact between an elderly person and a relative of the elderly person other than a spouse; or
    - (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
  - (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a paid caregiver who is the spouse of the elderly person.
  - (12) "Sexual contact" has the meaning given that term in ORS 163.305.
  - (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:
    - (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
    - (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.
- [Formerly 410.610; 1999 c.463 §6; 2001 c.104 §36; 2005 c.671 §4; 2007 c.70 §29; 2009 c.442 §33; 2009 c.595 §84; 2009 c.708 §1; 2009 c.837 §9; 2011 c.36 §3; 2011 c.506 §5; 2011 c.703 §23; 2013 c.129 §23; 2013 c.180 §7]

**Note:** The amendments to 124.050 by section 5, chapter 352, Oregon Laws 2013, become operative January 1, 2015. See section 12, chapter 352, Oregon Laws 2013. The text that is operative on and after January 1, 2015, is set forth for the user's convenience.

**124.050.** As used in ORS 124.050 to 124.095:

(1) "Abuse" means one or more of the following:

(a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury upon an elderly person.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Facility" means:

(a) A long term care facility as that term is defined in ORS 442.015.

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) "Intimidation" means compelling or deterring conduct by threat.

(6) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(e) A police department established by a university under ORS 352.383 or 353.125.

(7) "Neglect" means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical harm or significant emotional harm to the elderly person; or

(b) The failure of a caregiver to make a reasonable effort to protect an elderly person from abuse.

(8) "Person with a disability" means a person described in:

(a) ORS 410.040 (7); or

(b) ORS 410.715.

(9) "Public or private official" means:

(a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or chiropractor, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services or community developmental disabilities program.

(d) Employee of the Oregon Health Authority, county health department or community mental health program.

(e) Peace officer.

(f) Member of the clergy.

(g) Regulated social worker.

(h) Physical, speech or occupational therapist.

- (i) Senior center employee.
  - (j) Information and referral or outreach worker.
  - (k) Licensed professional counselor or licensed marriage and family therapist.
  - (L) Member of the Legislative Assembly.
  - (m) Firefighter or emergency medical services provider.
  - (n) Psychologist.
  - (o) Provider of adult foster care or an employee of the provider.
  - (p) Audiologist.
  - (q) Speech-language pathologist.
  - (r) Attorney.
  - (s) Dentist.
  - (t) Optometrist.
  - (u) Chiropractor.
- (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.
- (11)(a) "Sexual abuse" means:
- (A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;
  - (B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;
  - (C) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver;
  - (D) Any sexual contact between an elderly person and a relative of the elderly person other than a spouse; or
  - (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a paid caregiver who is the spouse of the elderly person.
- (12) "Sexual contact" has the meaning given that term in ORS 163.305.
- (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:
- (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
  - (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

**124.055 Policy.** The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons. [Formerly 410.620]

**124.060 Duty of officials to report; exception.** Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact, while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused a person 65 years of age or older, shall report or cause a report to be made in the manner required in ORS 124.065. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist or psychologist is not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295. [Formerly 410.630; 2009 c.708 §2]

**Note:** The amendments to 124.060 by section 6, chapter 352, Oregon Laws 2013, become operative January 1, 2015. See section 12, chapter 352, Oregon Laws 2013. The text that is operative on and after January 1, 2015, is set forth for the user's convenience.

**124.060.** Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact has suffered abuse, or that any person with whom the official comes in contact has abused a person 65 years of age or older, shall report or cause a report to be made in the manner required in ORS 124.065. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, member of the clergy or attorney is not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295. An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.

**124.065 Method of reporting; content; notice to law enforcement agency and to department.** (1) When a report is required under ORS 124.060, an oral report shall be made immediately by telephone or otherwise to the local office of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report of a possible crime is received by the department under ORS 124.060, the department or the designee of the department shall notify the law enforcement agency having jurisdiction within the county where the report was made. If the department or the designee of the department is unable to gain access to the allegedly abused elderly person, the department or the designee of the department may contact the law enforcement agency for assistance and the agency shall provide assistance.

(3) If the department or the designee of the department determines that there is reason to believe a crime has been committed, the department or the designee of the department shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. The law enforcement agency shall confirm to the department or the designee of the department its receipt of the notification within two business days.

(4) When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the department in the county where the report was made. [Formerly 410.640; 2009 c.837 §10]

**Note:** The amendments to 124.065 by section 11, chapter 837, Oregon Laws 2009, become operative July 1, 2015. See section 41, chapter 837, Oregon Laws 2009. The text that is operative on and after July 1, 2015, is set forth for the user's convenience.

**124.065.** (1) When a report is required under ORS 124.060, an oral report shall be made immediately by telephone or otherwise to the local office of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report of a possible crime is received by the department under ORS 124.060, the department or the designee of the department shall notify the law enforcement agency having jurisdiction within the county where the report was made. If the department or the designee of the department is unable to gain access to the allegedly abused elderly person, the department or the designee of the department may contact the law enforcement agency for assistance and the agency shall provide assistance.

(3) If the department or the designee of the department determines that there is reason to believe a crime has been committed, the department or the designee of the department shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. The law enforcement agency shall confirm to the department or the designee of the department its receipt of the notification.

(4) When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the department in the county where the report was made.

**124.070 Duty to investigate; notice to law enforcement agency and department; written findings; review by district attorney.** (1) Upon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse. The investigation shall include a visit to the named elderly person and communication with those individuals having knowledge of the facts of the particular case. If the alleged abuse occurs in a residential facility, the department shall conduct an investigation regardless of whether the suspected abuser continues to be employed by the facility.

(2) If the department finds reasonable cause to believe that a crime has occurred, the department shall notify in writing the appropriate law enforcement agency. If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the agency shall notify the department in writing. Upon completion of the evaluation of each case, the department shall prepare written findings that include recommended action and a determination of whether protective services are needed.

(3) Within three business days of receiving notification from the department that there is reasonable cause to believe that a crime has occurred, a law enforcement agency shall notify the department:

- (a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;
- (b) That the investigative findings have been given to the district attorney for review; or
- (c) That a criminal investigation will take place.
- (4) If a law enforcement agency gives the findings of the department to the district attorney for review, within five business days the district attorney shall notify the department that the district attorney has received the findings and shall inform the department whether the findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department.
- (5) If a district attorney files charges stemming from the findings of the department and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department of the determination within five business days and shall include information explaining the basis for the determination. [Formerly 410.650; 2009 c.837 §12]

**Note:** The amendments to 124.070 by section 13, chapter 837, Oregon Laws 2009, become operative July 1, 2015. See section 41, chapter 837, Oregon Laws 2009. The text that is operative on and after July 1, 2015, is set forth for the user's convenience.

- 124.070.** (1) Upon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse. The investigation shall include a visit to the named elderly person and communication with those individuals having knowledge of the facts of the particular case. If the alleged abuse occurs in a residential facility, the department shall conduct an investigation regardless of whether the suspected abuser continues to be employed by the facility.
- (2) If the department finds reasonable cause to believe that a crime has occurred, the department shall notify in writing the appropriate law enforcement agency. If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the agency shall notify the department in writing. Upon completion of the evaluation of each case, the department shall prepare written findings that include recommended action and a determination of whether protective services are needed.
- (3) After receiving notification from the department that there is reasonable cause to believe that a crime has occurred, a law enforcement agency shall notify the department:
- (a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;
  - (b) That the investigative findings have been given to the district attorney for review; or
  - (c) That a criminal investigation will take place.
  - (4) If a law enforcement agency gives the findings of the department to the district attorney for review, the district attorney shall notify the department that the district attorney has received the findings and shall inform the department whether the findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department.
  - (5) If a district attorney files charges stemming from the findings of the department and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department of the determination and shall include information explaining the basis for the determination.

**124.072 Required disclosure of protected health information to law enforcement agency; liability for disclosure.**

- (1) Upon notice by a law enforcement agency that an investigation into abuse is being conducted under ORS 124.070, and without the consent of the named elderly person or of the named elderly person's caretaker, fiduciary or other legal representative, a health care provider must:
- (a) Permit the law enforcement agency to inspect and copy, or otherwise obtain, protected health information of the named elderly person; and
  - (b) Upon request of the law enforcement agency, consult with the agency about the protected health information.
  - (2) A health care provider who in good faith discloses protected health information under this section is not civilly or criminally liable under state law for the disclosure.
  - (3) For purposes of this section:
    - (a) "Health care provider" has the meaning given that term in ORS 192.556.
    - (b) "Protected health information" has the meaning given that term in ORS 192.556. [2012 c.70 §6]

**124.073 Training for abuse investigators.** (1) The Department of Human Services shall:

- (a) Using new or existing materials, develop and implement a training and continuing education curriculum for persons other than law enforcement officers required by law to investigate allegations of abuse under ORS 124.070 or



441.650. The curriculum shall address the areas of training and education necessary to facilitate the skills required to investigate reports of abuse, including, but not limited to, risk assessment, investigatory technique, evidence gathering and report writing.

(b) Using new or existing materials, develop and implement training for persons that provide care to vulnerable persons to facilitate awareness of the dynamics of abuse, abuse prevention strategies and early detection of abuse.

(2) For purposes of this section, "vulnerable person" means a person 65 years of age or older. [2012 c.70 §21]

**Note:** 124.073 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 124 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**124.075 Immunity of person making report in good faith; identity confidential.** (1) Anyone participating in good faith in the making of a report of elder abuse and who has reasonable grounds for making the report shall have immunity from any civil liability that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

(2) The identity of the person making the report shall be treated as confidential information and shall be disclosed only with the consent of that person or by judicial process, or as required to perform the functions under ORS 124.070. [Formerly 410.660; 2005 c.671 §5]

**124.077 Immunity for disclosure to prospective employer.** A person who has personal knowledge that an employee or former employee of the person was found by the Department of Human Services, a law enforcement agency or a court to have committed abuse under ORS 124.005 to 124.040, 124.050 to 124.095 or 124.100 to 124.140, is immune from civil liability for the disclosure to a prospective employer of the employee or former employee of known facts concerning the abuse. [2009 c.837 §14]

**Note:** 124.077 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 124 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**124.080 Photographing of victim; photograph as record.** (1) In carrying out its duties under ORS 124.070 a law enforcement agency or the Department of Human Services may photograph or cause to have photographed any victim who is the subject of the investigation for purposes of preserving evidence of the condition of the victim at the time of the investigation.

(2) For purposes of ORS 124.090, photographs taken under authority of subsection (1) of this section shall be considered records. [Formerly 410.670]

**124.085 Catalog of abuse records; confidentiality.** A proper record of complaints made under ORS 124.060 and 124.065 shall be maintained by the Department of Human Services. The department shall prepare reports in writing when investigation has shown that the condition of the elderly person was the result of abuse even if the cause remains unknown. The complaints and investigative reports shall be cataloged under the name of the victim but shall be treated as confidential information subject to ORS 124.090, and shall be disclosed only with the consent of that person or by judicial process. [Formerly 410.680; 2012 c.70 §11]

**124.090 Confidentiality of records; exceptions.** (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of the public or private official or any other person who made the complaint, the witnesses and the elderly persons, and the reports and records compiled under the provisions of ORS 124.050 to 124.095, are confidential and are not accessible for public inspection.

(2) Notwithstanding subsection (1) of this section, the Department of Human Services or the department's designee may, if appropriate, make the names of the witnesses and the elderly persons, and the reports and records compiled under ORS 124.050 to 124.095, available to:

(a) A law enforcement agency;

(b) A public agency that licenses or certifies residential facilities or licenses or certifies the persons practicing in the facilities;

(c) A public agency or private nonprofit agency or organization providing protective services for the elderly person;

(d) The Long Term Care Ombudsman;

(e) A public agency that licenses or certifies a person that has abused or is alleged to have abused an elderly person;

(f) A court pursuant to a court order or as provided in ORS 125.012; and

(g) An administrative law judge in an administrative proceeding when necessary to provide protective services as defined in ORS 410.040 to an elderly person, when in the best interests of the elderly person or when necessary to investigate, prevent or treat abuse of an elderly person.

(3) Information made available under subsection (2) of this section, and the recipient of the information, are otherwise subject to the confidentiality provisions of ORS 124.050 to 124.095. [Formerly 410.690; 2001 c.900 §21; 2012 c.70 §12]

**124.095 Spiritual treatment not abuse.** An elderly person who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered subjected to abuse by reason of neglect under ORS 124.050 to 124.095. [Formerly 410.700]

**Note:** Sections 23 and 24, chapter 70, Oregon Laws 2012, provide:

**Sec. 23. Oregon Elder Abuse Work Group.** (1) It is the intent of the Legislative Assembly to recreate the Oregon Elder Abuse Work Group, first established on June 21, 2011, by section 1, chapter 444, Oregon Laws 2011, and repealed on February 29, 2012, so that the work group may complete its work as set forth in this section and section 1, chapter 444, Oregon Laws 2011.

(2) The Oregon Elder Abuse Work Group shall consist of 22 members appointed as follows:

(a) The President of the Senate shall appoint two members from among members of the Senate who shall cease being members of the work group upon ceasing to be members of the Legislative Assembly.

(b) The Speaker of the House of Representatives shall appoint two members from among members of the House of Representatives who shall cease being members of the work group upon ceasing to be members of the Legislative Assembly.

(c) The Governor shall appoint 12 members as follows:

(A) The Long Term Care Ombudsman appointed under ORS 441.103;

(B) Three members representing long term care providers for elderly persons;

(C) Two members representing law enforcement agencies, one of whom shall be a representative from the Oregon District Attorneys Association and one of whom shall be a representative from a local law enforcement agency with expertise in investigating elder abuse;

(D) Two members representing consumers who are elderly persons;

(E) An officer of a bank, as defined in ORS 706.008;

(F) An officer of a credit union, as defined in ORS 723.008;

(G) A representative of unionized health care workers who is recommended by a local affiliate of the Service Employees International Union; and

(H) A member of the Oregon Patient Safety Commission established under ORS 442.820.

(d) The chairperson of the Governor's Commission on Senior Services created under ORS 410.320 shall appoint one member.

(e) The Director of Human Services shall appoint two members as follows:

(A) One member with expertise in elder abuse services and investigations; and

(B) One member representing the office or department within the Department of Human Services that performs criminal background checks of individuals providing services to elderly persons or conducting elder abuse investigations.

(f) The Attorney General shall appoint a deputy or assistant attorney general with expertise in the investigation of criminal offenses that have been committed against vulnerable persons.

(g) The Board of Governors of the Oregon State Bar shall appoint two members as follows:

(A) A lawyer whose practice is concentrated on elder law; and

(B) A criminal defense lawyer.

(3) The work group shall meet at times and places specified by the call of the chairperson or of a majority of the members of the work group.

(4) The work group shall study and make recommendations on the definition of elder abuse, including but not limited to:

(a) Aligning definitions of abuse of vulnerable persons across populations, agencies, service providers and law enforcement;

(b) Defining abuse of vulnerable persons for purposes of investigation and for purposes of making determinations that abuse of vulnerable persons has or has not occurred; and

(c) Defining abuse of vulnerable persons for purposes of abuse data reporting systems.

(5) A majority of the members of the work group constitutes a quorum for the transaction of business.

(6) Official action by the work group requires the approval of a majority of the members of the work group.

(7) The work group shall elect two of its members to serve as cochairpersons.

(8) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(9) The work group shall meet at times and places specified by the call of the cochairpersons or of a majority of the members of the work group.

(10) The work group may adopt rules necessary for the operation of the work group.

(11) The work group shall make a report, and may include recommendations for legislation, to interim committees of the Legislative Assembly related to the provision of services to elderly persons and investigation of elder abuse no later than February 1, 2014.

(12) The work group may accept donations of staff support, office space and equipment from advocacy or service provider organizations to assist the work group in the performance of its functions.

(13) Notwithstanding ORS 171.072, members of the work group who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the work group. Other members of the work group are not entitled to compensation or reimbursement for expenses and serve as volunteers on the work group.

(14) All agencies of state government as defined in ORS 174.111 are directed to assist the work group in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the work group consider necessary to perform their duties. [2012 c.70 §23; 2013 c.352 §8]

**Sec. 24.** Section 23, chapter 70, Oregon Laws 2012, is repealed on June 30, 2015. [2012 c.70 §24; 2013 c.352 §9]

## CIVIL ACTION FOR ABUSE OF VULNERABLE PERSON

**124.100 Definitions for ORS 124.100 to 124.140; action authorized; relief; qualifications for bringing action; service on Attorney General.** (1) As used in ORS 124.100 to 124.140:

(a) "Elderly person" means a person 65 years of age or older.

(b) "Financially incapable" has the meaning given that term in ORS 125.005.

(c) "Incapacitated" has the meaning given that term in ORS 125.005.

(d) "Person with a disability" means a person with a physical or mental impairment that:

(A) Is likely to continue without substantial improvement for no fewer than 12 months or to result in death; and

(B) Prevents performance of substantially all the ordinary duties of occupations in which an individual not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the person with the physical or mental impairment.

(e) "Vulnerable person" means:

(A) An elderly person;

(B) A financially incapable person;

(C) An incapacitated person; or

(D) A person with a disability who is susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person's physical or mental impairment.

(2) A vulnerable person who suffers injury, damage or death by reason of physical abuse or financial abuse may bring an action against any person who has caused the physical or financial abuse or who has permitted another person to engage in physical or financial abuse. The court shall award the following to a plaintiff who prevails in an action under this section:

(a) An amount equal to three times all economic damages, as defined in ORS 31.710, resulting from the physical or financial abuse, or \$500, whichever amount is greater.

(b) An amount equal to three times all noneconomic damages, as defined by ORS 31.710, resulting from the physical or financial abuse.

(c) Reasonable attorney fees incurred by the plaintiff.

(d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.

(3) An action may be brought under this section only by:

(a) A vulnerable person;

(b) A guardian, conservator or attorney-in-fact for a vulnerable person;

(c) A personal representative for the estate of a decedent who was a vulnerable person at the time the cause of action arose; or

(d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who is a vulnerable person.

(4) An action may be brought under this section only for physical abuse described in ORS 124.105 or for financial abuse described in ORS 124.110.

(5) An action may be brought under this section against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse.

(6) A person commencing an action under this section must serve a copy of the complaint on the Attorney General within 30 days after the action is commenced. [1995 c.671 §1; 1997 c.249 §41; 1999 c.305 §1; 2001 c.843 §3; 2003 c.211 §1; 2005 c.87 §1; 2005 c.386 §1a; 2007 c.70 §30]

**124.105 Physical abuse subject to action.** (1) An action may be brought under ORS 124.100 for physical abuse if the defendant engaged in conduct against a vulnerable person that would constitute any of the following:

- (a) Assault, under the provisions of ORS 163.160, 163.165, 163.175 and 163.185.
- (b) Menacing, under the provisions of ORS 163.190.
- (c) Recklessly endangering another person, under the provisions of ORS 163.195.
- (d) Criminal mistreatment, under the provisions of ORS 163.200 and 163.205.
- (e) Rape, under the provisions of ORS 163.355, 163.365 and 163.375.
- (f) Sodomy, under the provisions of ORS 163.385, 163.395 and 163.405.
- (g) Unlawful sexual penetration, under the provisions of ORS 163.408 and 163.411.
- (h) Sexual abuse, under the provisions of ORS 163.415, 163.425 and 163.427.
- (i) Strangulation, under ORS 163.187.

(2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any unreasonable physical constraint on the vulnerable person or subjected the vulnerable person to prolonged or continued deprivation of food or water.

(3) An action may be brought under ORS 124.100 for physical abuse if the defendant used a physical or chemical restraint, or psychotropic medication on the vulnerable person without an order from a physician licensed in the State of Oregon or under any of the following conditions:

- (a) For the purpose of punishing the vulnerable person.
- (b) For any purpose not consistent with the purposes authorized by a physician.
- (c) For a period significantly beyond that for which the restraint or medication was authorized by a physician. [1995 c.671 §2; 2003 c.577 §4; 2005 c.386 §2]

**124.110 Financial abuse subject to action.** (1) An action may be brought under ORS 124.100 for financial abuse in the following circumstances:

(a) When a person wrongfully takes or appropriates money or property of a vulnerable person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the vulnerable person.

(b) When a vulnerable person requests that another person transfer to the vulnerable person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the vulnerable person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the vulnerable person when:

(A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the vulnerable person; and

(B) The other person acts in bad faith, or knew or should have known of the right of the vulnerable person to have the money or property transferred as requested or otherwise made available to the vulnerable person.

(c) When a person has at any time engaged in conduct constituting a violation of a restraining order regarding sweepstakes that was issued under ORS 124.020.

(2) A transfer of money or property that is made for the purpose of qualifying a vulnerable person for Medicaid benefits or for any other state or federal assistance program, or the holding and exercise of control over money or property after such a transfer, does not constitute a wrongful taking or appropriation under subsection (1)(a) of this section or the holding of money or property without good cause for the purposes of subsection (1)(b) of this section. [1995 c.671 §3; 1999 c.305 §2; 1999 c.875 §8; 2005 c.386 §3]

**124.115 Persons not subject to action.** (1) Except as provided by subsection (2) of this section, an action under ORS 124.100 may not be brought against:

- (a) Financial institutions, as defined by ORS 706.008;
- (b) A health care facility, as defined in ORS 442.015;
- (c) Any facility licensed or registered under ORS chapter 443; or
- (d) Broker-dealers licensed under ORS 59.005 to 59.541.

(2) An action may be brought under ORS 124.100 against a person listed in subsection (1) of this section if:

- (a) The person is convicted of one of the crimes specified in ORS 124.105 (1); or
- (b) The person engages in conduct constituting financial abuse as described in ORS 124.110, and the person is convicted of a crime by reason of the conduct. [1995 c.671 §3a; 1997 c.631 §408; 1999 c.305 §3]

**124.120 Relief available.** The court may restrain and remedy the conduct described in ORS 124.105 and 124.110 by issuing appropriate orders including but not limited to:

- (1) A judgment for the remedies provided by ORS 124.100.
- (2) Restraining orders, temporary injunctions or other actions as the court deems proper, including the acceptance of satisfactory performance bonds, the creation of receiverships, the appointment of qualified receivers and the enforcement of constructive trusts.
- (3) Ordering any person to divest direct or indirect interest or contact with any person or enterprise.
- (4) Imposing reasonable restrictions, including permanent injunctions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor or conduct to the extent permitted by the Constitution of the United States and this state. [1995 c.671 §4]

**124.125 Action by Attorney General, Department of Human Services or district attorney; investigative demands.** (1) The Attorney General, the Department of Human Services or any district attorney may bring an action against any person who engages in conduct described in ORS 124.105 and 124.110. In addition to remedies otherwise provided in ORS 124.100 to 124.140, upon prevailing in the action, the court shall award to the Attorney General, Department of Human Services or district attorney costs of investigation and penalties. Penalties awarded under this section may not exceed \$25,000 per occurrence.

(2) The Attorney General may intervene in any civil action brought under ORS 124.100 if the Attorney General certifies that, in the opinion of the Attorney General, the action is of general public importance. In the action, the state shall be entitled to the same relief as if the Attorney General instituted the action under the provisions of this section.

(3) When it appears that a person is engaging in conduct described in ORS 124.105 or 124.110, the Attorney General or any district attorney may execute in writing and cause to be served an investigative demand upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation. The investigative demand shall require the person, under oath or otherwise, to appear and testify, to answer written interrogatories or to produce relevant documentary material or physical evidence for examination, at a reasonable time and place as stated in the investigative demand.

(4) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, including a request for privileged material, may be filed in the appropriate court.

(5) Service of an investigative demand under subsection (3) of this section shall be made personally within this state. If personal service within this state cannot be made, substituted service may be made by any of the following methods:

- (a) Personal service outside of this state;
- (b) Mailing the investigative demand by registered or certified mail to the last-known place of business, residence or abode within or outside of this state of the person for whom service is intended;
- (c) As to any person other than a natural person, in the manner provided for service of summons in an action or suit; or
- (d) Such service as the court may direct.

(6) If any person after being served with an investigative demand under subsection (3) of this section fails or refuses to obey an investigative demand issued by the Attorney General or a district attorney, the Attorney General or district attorney may, after notice to an appropriate court and after a hearing, request an order:

- (a) Granting injunctive relief to restrain the person from engaging in conduct that is involved in the alleged or suspected violation; or
- (b) Granting other relief as may be required, until the person obeys the investigative demand.

(7) Any disobedience of any final order of a court under subsection (6) of this section shall be punished as a contempt of court.

(8) ORS 192.583 to 192.607 apply to the disclosure of financial records by a financial institution pursuant to the service of an investigative demand under subsection (3) of this section. [1995 c.671 §5; 2003 c.265 §1]

**124.130 Statute of limitation.** An action under ORS 124.100 to 124.140 must be commenced within seven years after discovery of the conduct described in ORS 124.105 and 124.110 that gives rise to a cause of action under ORS 124.100 to 124.140. [1995 c.671 §6]

**124.135 Remedies not exclusive.** The remedies provided by ORS 124.100 to 124.140 are in addition to any other remedy, civil or criminal, that may be available under any other provision of law. [1995 c.671 §7]

**124.140 Estoppel based on criminal conviction.** A defendant convicted in any criminal proceeding of conduct that gives rise to a cause of action under ORS 124.100, whether the conviction results from a plea or verdict, is estopped from denying the conduct for purposes of an action under ORS 124.100 to 124.140. [1995 c.671 §8]

#### PENALTIES

**124.990 Criminal penalty.** A person who violates ORS 124.060 commits a Class A violation. [Formerly 410.990]

