

**OLD AND IN THE WAY: ASPECTS OF OREGON'S  
ELDER ABUSE ACT**

**ELDERLY PERSONS AND PERSONS WITH DISABILITIES  
ABUSE PREVENTION ACT**

I) **Abuse Prevention.** ORS 124.005-124.040.

a) **Definitions.** ORS 124.005. [\*\*\*Note that each of the three sections of Elder Abuse Act has its own definitions]

i) "Abuse"

(1) Physical / Emotional

- (a) Non-accidental injury; injury not conforming to explanation. ORS 124.005(1)(a).
- (b) Neglect leading to harm; abandonment. ORS 124.005(1)(b), (c)
- (c) Willful infliction of physical pain. ORS 124.005(1)(d)
- (d) Name calling. ORS 124.005(1)(e)
- (e) Non-consensual sexual contact. ORS 124.005(1)(h)

(2) Financial

- (a) Sweepstakes promotions. ORS 124.005(1)(f).
- (b) "Wrongfully taking or appropriating money or property," or threatening the same. ORS 124.005(1)(g).

ii) "Elderly person" means 65+ and not subject to ORS 441.640-665

- (1) ORS 441.640 applies to the "public or private official" who in the course of official duties has found cause to believe abuse at a long term care facility has occurred. Such officials include legal counsel for residents. ORS 441.630(6)(i).

b) **Petition for restraining order.** ORS 124.010

i) Within 180 days of abuse, if immediate and present danger of future abuse, victim may petition for relief. ORS 124.010(1)(a).

- (1) 180 days is tolled while respondent is incarcerated or lives more than 100 miles away. ORS 124.010(6).

ii) Petition must be filed in petitioner's or respondent's county of residence. ORS 124.012.

iii) Standard form provided in statute and available from clerk of court. ORS 124.020(6).

iv) No filing fee, service fee, or hearing fee for elder abuse proceedings. ORS 124.020(7)

v) Must be filed by victim, guardian or guardian *ad litem*.

**c) "Guardian petitioners" ORS 124.005(3)**

i) Must notify elderly persons on whose behalf they are petitioning within 72 hours after court issues restraining order. ORS 124.024(4).

ii) Elderly persons may not file elder abuse petitions against their guardians or conservators. ORS 124.010(8).

**d) Hearings**

i) Initial *ex parte* hearing.

(1) 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." ORS 124.020(1).

(2) Showing may be made by testimony from victim, guardian, witnesses, or investigating authority. ORS 124.020(3)

ii) Hearing at request of respondent.

(1) Within 21 days of request; may be extended by five days if the other party hires a lawyer. ORS 124.015(3).

(2) Standard of proof: preponderance of evidence. ORS 124.010(2).

iii) Requested hearing upon relief granted.

(1) Within 30 days after service of restraining order or after notice given to elderly person by guardian petitioner. ORS 124.020(9).

**e) Remedies**

i) At *ex parte* hearing, upon showing of abuse within past 180 days and immediate and present danger of future abuse, at petitioner's request the court shall:

(1) Order respondent away from residence, even if jointly owned or rented. ORS 124.020(1)(a).

(2) Order a peace officer to escort a party to recover personal effects from residence. ORS 124.020(1)(b).

(3) Order respondent restrained from abusing or attempting to abuse petitioner. ORS 124.020(1)(c).

(4) If restraint from entering any premises is necessary to prevent abuse, respondent shall be so restrained. ORS 124.020(1)(d)

(5) Order respondent restrained from mailing sweepstakes promotions to petitioner and refund any payment received. ORS 124.020(1)(e).

(6) In the case of wrongfully taking money or property, court may order relief it considers it necessary to prevent or remedy the wrongful taking. ORS 124.020(2)(a)

- (a) Some possible relief:
  - (i) Stop respondent from controlling finances, returning money or property to petitioner, requiring respondent to follow guardian's instructions, or prohibiting transfer of money to anyone other than the elderly person.
  - (b) This Act does **NOT** authorize a court to (124.020(2)(b)):
    - (i) Give control of the money or property to a third party
    - (ii) Give relief more appropriate to a protective proceeding under ORS 125; e.g. giving control of finances for purpose other than abuse.
- ii) At hearing with both parties, the court may:
  - (1) Order either party away from residence, even if jointly owned or rented. ORS 124.015(2)(a).
  - (2) Assess fees and costs on either party. ORS 124.015(2)(b).
- iii) Consent agreement may only restrain one party if that party was previously restrained by court order. ORS 124.015(4).
- iv) Orders and agreements under this Act may not affect title to real property. ORS 124.015(5).
- v) Elder Abuse proceedings "in addition to and not in lieu of any other available civil or criminal remedies." ORS 124.015(7).

## **ELDER ABUSE REPORTING**

### **II) Reporting Requirements. ORS 124.050-124.095.**

#### **a) Definitions. ORS 124.050.**

- i) "Abuse" definition here contemplates only elderly persons (not disabled) as it relates to physical abuse. ORS 124.050(1). However, financial exploitation includes the disabled as well. ORS 124.050(4)
  - (1) Financial exploitation, neglect, verbal abuse, and sexual abuse defined separately.
  - (2) Sweepstakes not included.
- ii) "Financial Exploitation" receives its own definition. ORS 124.050(4).
  - (1) Wrongfully taking or misusing assets belonging to or for the elderly. ORS 124.050(4)(a) and (c).
  - (2) Reasonably alarming an elderly person by threatening the above. ORS 124.050(4)(b).
  - (3) Failing to support an elderly person with that person's income or assets. ORS 124.050(d).
- iii) "Law enforcement agency" includes district attorney. ORS 124.050(6)(d).
- iv) "Neglect" need not result in actual physical harm. ORS 124.050(7).
- v) "Public or private official." ORS 124.050(9)

- (1) Not just any public official, but those who "come in contact with elderly persons in the performance of the [their] official duties." ORS 124.050(9)(L)
- (2) Enumerated list including health care providers, peace officers, firefighters and EMTs, social workers, therapists, psychologists, providers of adult foster care, etc. Also purports to include clergy members.

**b) Who must report?**

- i) "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 [to DHS or local law enforcement.]" ORS 124.060.
- ii) Limited exceptions for psychologists
- iii) Note that legal counsel for nursing home residents are mandated reporters under ORS 441.640, ORS 441.630(6)(i).
- iv) Penalty: Failure to report is a Class A violation. ORS 124.990.

**c) Immunity from liability**

- i) ORS 124.075: Person making good faith report upon reasonable grounds:
  - (1) immune from civil liability,
  - (2) immune from subpoena to consequent judicial proceeding, and
  - (3) identity shall be confidential.
- ii) Further immunity for those who inform prospective employers of prior finding of elder abuse by DHS, law enforcement, or court. ORS 124.077\*. Provided that informer has personal knowledge of finding.

**CIVIL ACTION FOR ABUSE OF "VULNERABLE PERSON"**

III) **Civil Action.** ORS 124.100 – 124.140.

a) **Definitions.** ORS 124.100(1).

- i) "Vulnerable person" includes elderly, financially incapable, incapacitated, and certain disabled persons

b) **Cause of action.**

- i) "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." ORS 124.100(2)
  - (1) Actionable "physical abuse" is enumerated in ORS 124.105.
    - (a) Various crimes. ORS 124.105(1).

- (b) Unreasonable restraint or depriving of food or water. ORS 124.105(2).
- (c) Restraint unauthorized by physician. ORS 124.105(3).
- (2) Actionable "financial abuse" is enumerated in ORS 124.110.
  - (a) Wrongful taking of money or property. ORS 124.110(1)(a).
    - (i) Fiduciary relationship not a consideration.
  - (b) Bad faith failure to transfer to a vulnerable person money or property held for that vulnerable person. ORS 124.110(1)(b).
  - (c) Violation of sweepstakes restraining order. ORS 124.110(1)(c).

ii) **Statute of Limitation:** Seven years after discovery of the conduct. ORS 124.130.

### iii) Immunities

- (1) Transferring or holding money to secure Medicaid benefits for vulnerable person is not wrongful. ORS 124.110(2).
- (2) The following persons are not subject to action unless they commit a crime. ORS 124.115.
  - (a) Banks and financial institutions. See ORS 706.008.
  - (b) Health care facilities.
    - (i) Includes hospitals, long term care facilities, etc.
    - (ii) Some exceptions; e.g. Department of Corrections facilities, substance abuse facilities. See ORS 442.015.
  - (c) Residential care facilities, foster homes, and hospices. See ORS 443.
  - (d) Broker-dealers licensed under ORS Chap. 59.

iv) Collateral estoppel applies where a defendant is convicted of conduct giving rise to Elder Abuse action, whether the conviction results from a plea or verdict. ORS 124.140.

### c) Remedies

#### i) Damages

- (1) Treble economic damages. ORS 124.100(2)(a).
- (2) Treble noneconomic damages. ORS 124.100(2)(b).
- (3) Plaintiff **only** attorney fees. ORS 124.100(2)(c).
- (4) Conservator/Guardian ad litem's fees. ORS 124.100(2)(d).

#### ii) Other relief. ORS ORS 124.120

- (1) Courts have wide discretion to issue restraining orders, injunctions, etc.
- (2) Statute even allows court to prohibit persons from making investments and from engaging in similar endeavors "to the extent permitted by the Constitution of the United States and this state."

iii) Remedies under this statute not exclusive of any others. ORS 124.135.

### d) Action by Attorney General, DHS, or district attorney.

- i) Attorney General, DHS, or any district attorney may initiate a civil action. ORS 124.125(1).
- ii) Attorney General may intervene in any civil action if it is "of general public importance," and thereafter is entitled to same relief as if the Attorney General had instituted the action. ORS 124.125(2).
- iii) Additional remedies available in suits by these entities. ORS 124.125(1).
  - (1) May recover costs of investigation.
  - (2) May recover penalties up to \$25,000 per occurrence.
- iv) Additional power to serve "investigative demand." ORS 124.125(3) through (8).
  - (1) AG or DA may serve an investigative demand on any person believed to have information about elder abuse, requiring testimony, answers to interrogatories, or other relevant documents or physical evidence.
  - (2) If person fails to obey investigative demand, the AG or a DA may ask for a court order for relief, including for an injunction restraining the person from the conduct in the alleged violation.