

Mandatory Abuse Reporting for Oregon Lawyers

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Oregon Statutory Abuse Reporters [summarized and condensed]

- ▶ **Medical Professionals**
- ▶ **Audiologists and Therapists**
- ▶ **Police Officers, Firefighters, EMTs**
- ▶ **Health and Human Services Workers**
- ▶ **Care Providers and Legal Custodians**
- ▶ **Clergy and Mental Health Professionals**
- ▶ **Physical, Speech and Occupational Therapists**
- ▶ **Members of the Legislative Assembly**
- ▶ **Attorneys**

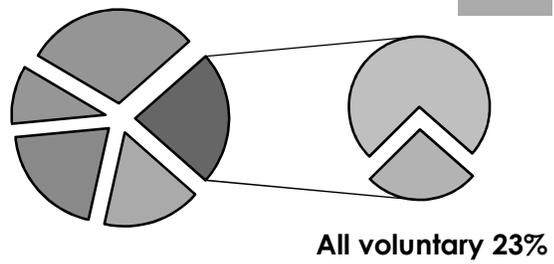
Legislative Purpose [example: elder abuse reporting]

“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.”

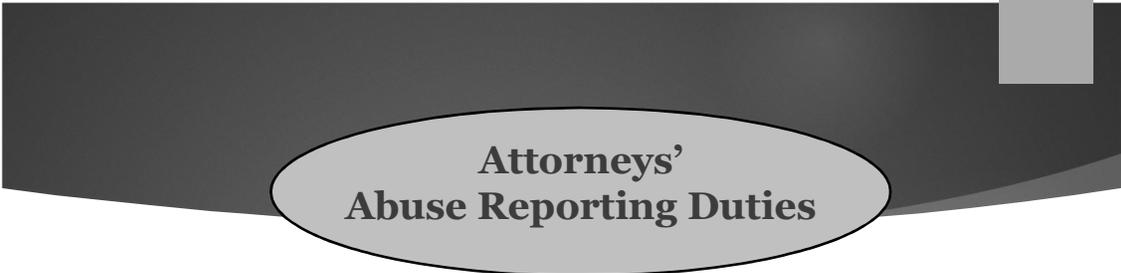
ORS 124.055



Three quarters of all child abuse reports come from mandatory reporters.



- Police 17%
- School 20%
- Medical 10%
- Other mandated 30%
- Parent/Self 6%
- Other voluntary 17%



Attorneys' Abuse Reporting Duties



ELDERS



CHILDREN



**MENTAL ILLNESS/
DEVELOPMENTAL DISABILITY**



LONG-TERM CARE RESIDENT

Your Abuse Reporting Duty

You **must** report abuse if you have:

- ☎ **Contact** with an abuser or a victim, and
- ☎ **Reasonable cause** to believe that
- ☎ A **protected person**
- ☎ Has Been **abused**,

➔ UNLESS an exception applies.

This duty exists 24 hours a day, 7 days a week!

Following an employer's policy is not enough!

How to Report

- ☎ **Immediately = without delay**
- ☎ **To DHS or law enforcement**
- ☎ **Oral report required**
- ☎ **Give as much as information as possible**
- ☎ **Explain allegation of abuse**

Reporting Hotline:

1-855-503-SAFE

or call DHS Branch Offices

Report Should Include ...

- ▶ **Names and addresses**
- ▶ **Nature and extent of the abuse**
- ▶ **Explanation given for the abuse**
- ▶ **Cause of abuse and identity of perpetrator.**

CHILD ABUSE REPORTING



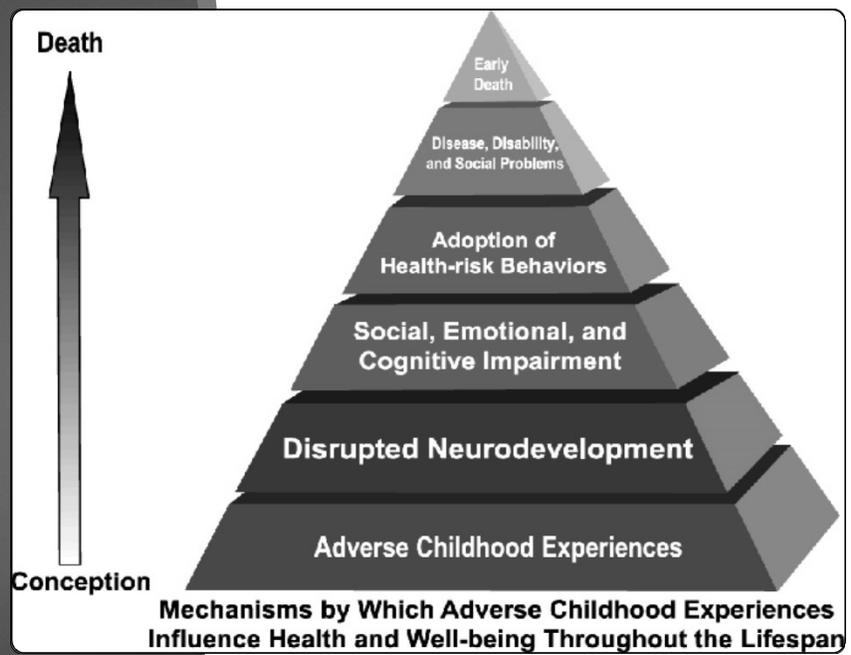
The Battered Child Syndrome

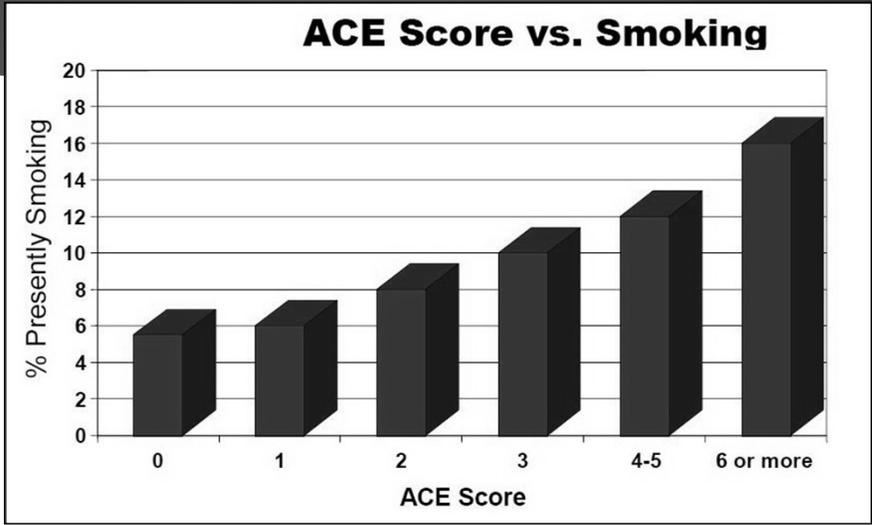
- ▶ C. H. Kempe, Frederic N. Silverman, Brandt F. Steele, William Droegemuller & Henry K. Silver, *The Battered Child Syndrome*, 181 J Am Med Ass'n 17 (1962).

Foundation
of child
abuse as a
diagnosis.

Also called
Tardieu's syndrome;
Caffey-Kempe
syndrome.

ACEs Pyramid





- Alcoholism and Alcohol Abuse
- Chronic Obstructive Pulmonary Disease (COPD)
- Depression
- Fetal Death
- Health-related Quality of Life
- Illicit Drug Use
- Ischemic Heart Disease (IHD)
- Liver Disease
- Risk for Intimate Partner Violence
- Multiple Sexual Partners
- Sexually Transmitted Diseases (STDs)
- Smoking
- Suicide Attempts
- Unintended Pregnancies
- Early Initiation of Smoking
- Early Initiation of Sexual Activity
- Adolescent Pregnancy
- Psychotropic Medications Prescribed

What is Contact?

- A touching or meeting; association or relationship
- Need not be to be linked to abuse
BUT there must be physical or associational contact
- Receiving information in a public meeting about someone is not sufficient (AG opinion)
- Telephone or email contact?
- Can be before or after the abuse or the disclosure



What is Reasonable Cause?

- ▶ **Any reasonable suspicion of abuse should be reported.**
- ▶ **Reasonable suspicion is more than a hunch.**
- ▶ **It requires an ability to point to articulable facts based on the totality of the circumstances.**
- ▶ **Your obligation to report does not depend upon whether abuse actually occurred**

Let the Experts Decide

- ▶ You do not need to investigate
- ▶ OK to comment on injury or situation and observe
- ▶ Your job is not to determine whether abuse occurred.
- ▶ Do you have a reasonable suspicion of abuse?
- ▶ Consider making a voluntary report (assuming no confidentiality issue).
- ▶ If the explanation does not suit the injury, make a report.

Child Abuse Defined—ORS 419B.005

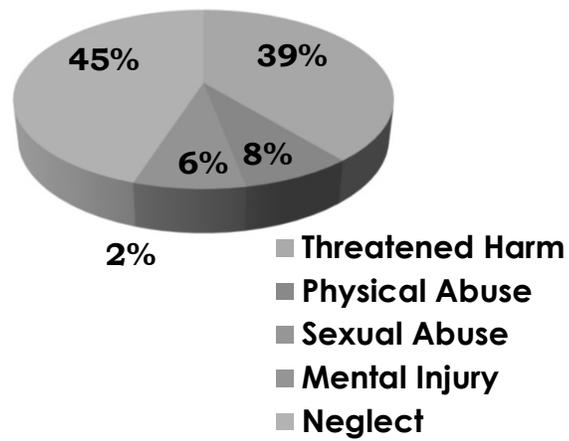
- ▶ **Any assault; any injury not caused by accident; any injury at variance with the explanation given for it.**
- ▶ **Any mental injury caused by cruelty**
- ▶ **Rape, sexual abuse, or sexual exploitation**
- ▶ **Neglect**
- ▶ **Child selling**
- ▶ **Presence where methamphetamines are manufactured**
- ▶ **Unlawful exposure to controlled substance w/risk of harm**
- ▶ **Threat of harm**
- ▶ **Not reasonable discipline unless results in above**

Warning Signs of Child Abuse

- ▶ Unexplained injury or one that doesn't fit the explanation given for it
- ▶ Injuries in various stages of healing
- ▶ Multiple bruises or bruises on soft tissue; any bruise on a baby
- ▶ Child wary of parents or adults generally.
- ▶ Fatigue, listlessness, constant hunger
- ▶ Unusual sexual knowledge
- ▶ Inappropriately adult or infantile



Types of Child Abuse Reported—2015



ELDER ABUSE REPORTING



Where does elder abuse occur?



- **66% at home**
- **34% care facility**

Elder Abuse Defined—ORS 124.050(1)

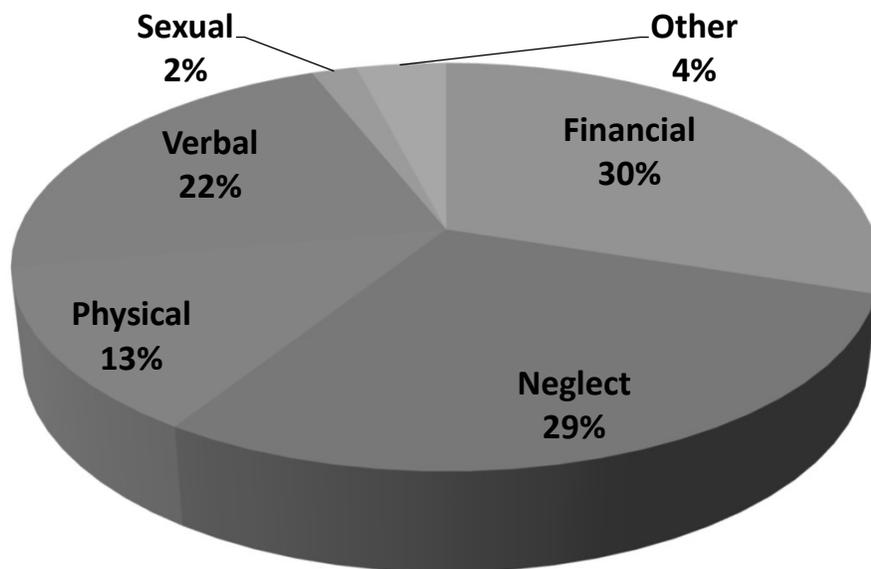
- ▶ **Financial Exploitation**
- ▶ **Abandonment or Neglect**
- ▶ **Verbal Abuse**
- ▶ **Willful infliction of physical pain or injury**
- ▶ **Any injury not caused by accident; any injury at variance with the explanation given for it.**
- ▶ **Sex Abuse**
- ▶ **Seclusion or Restraint**

Warning Signs of Elder Abuse

- ▶ **Unexplained injury or one that doesn't fit the explanation given for it**
- ▶ **Elder not permitted to speak for themselves or without the presence of others.**
- ▶ **Being extremely withdrawn and non-communicative or non-responsive.**
- ▶ **Unpaid bills, overdue rent, utility shut-off notices**



2015 Substantiated Elder Abuse



EXCEPTIONS TO REPORTING



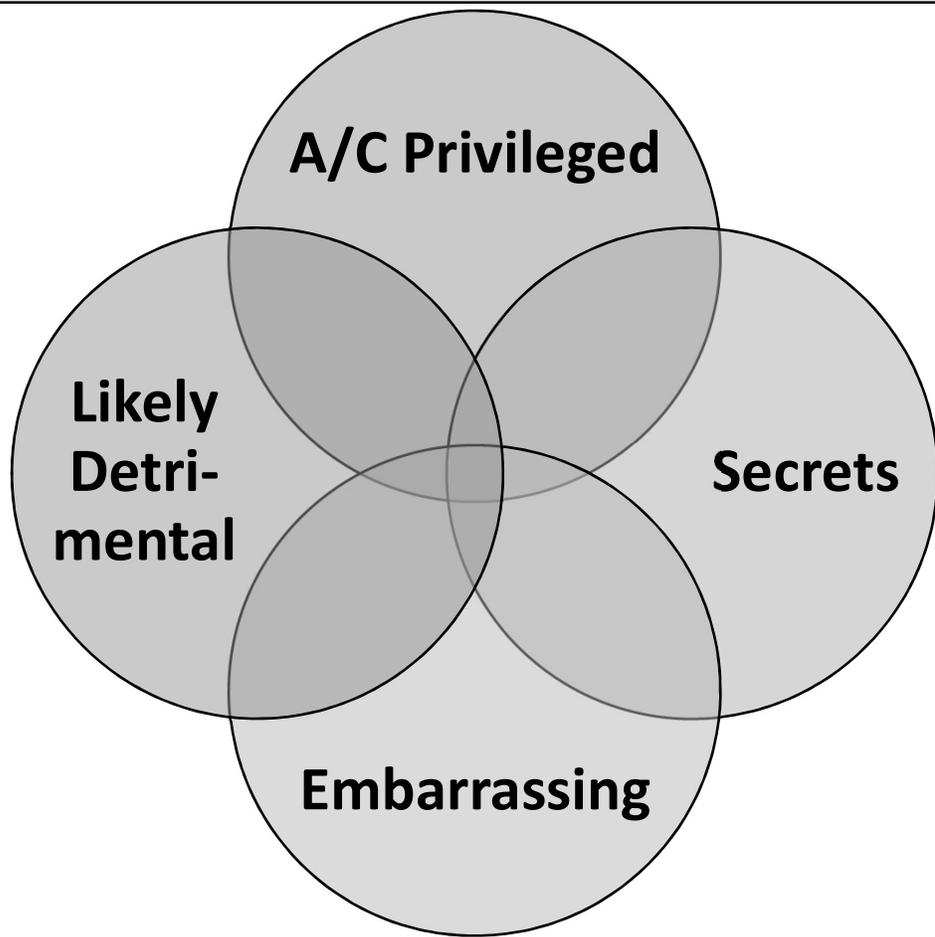
Exception: Certain Client Confidences

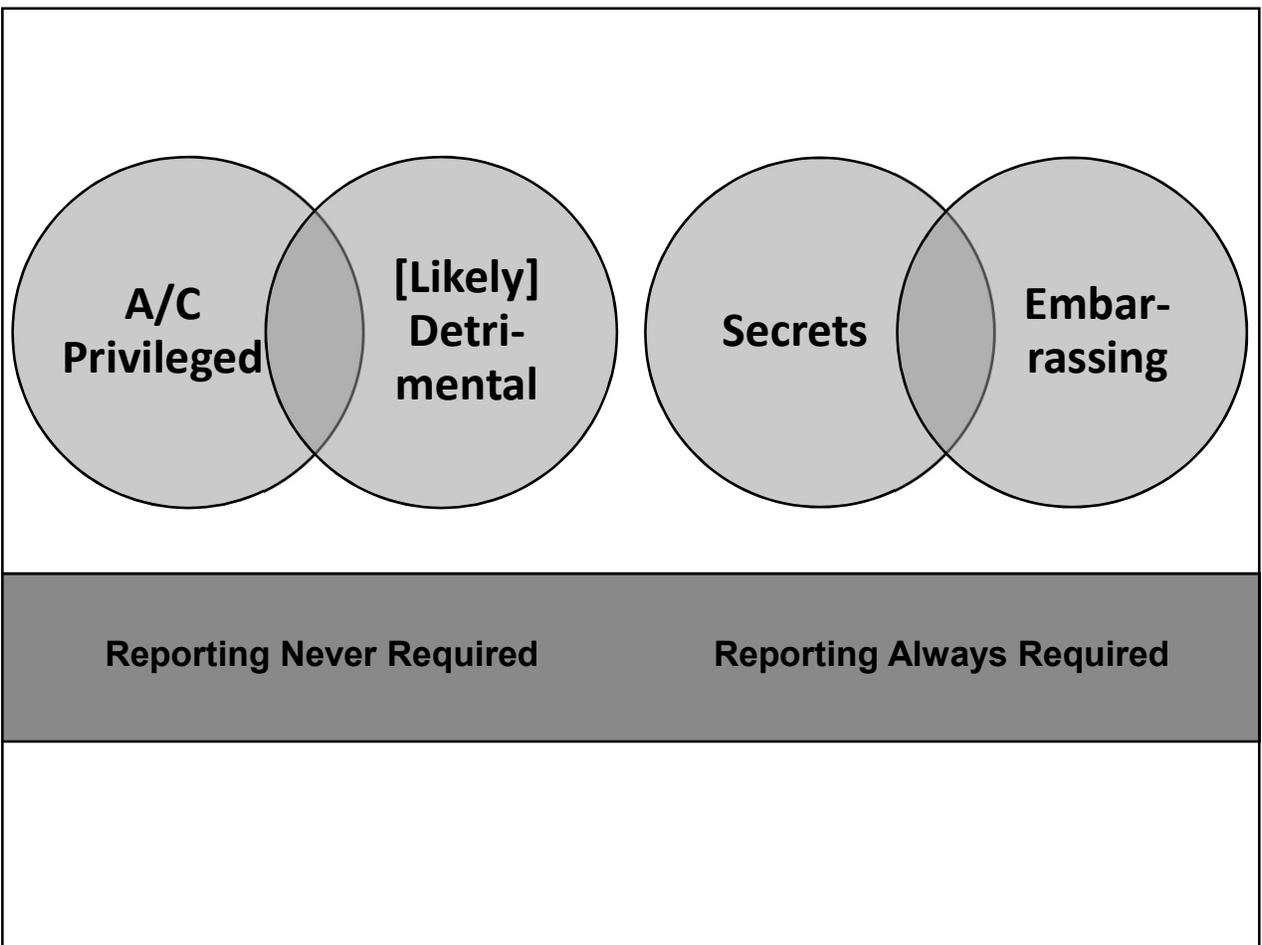


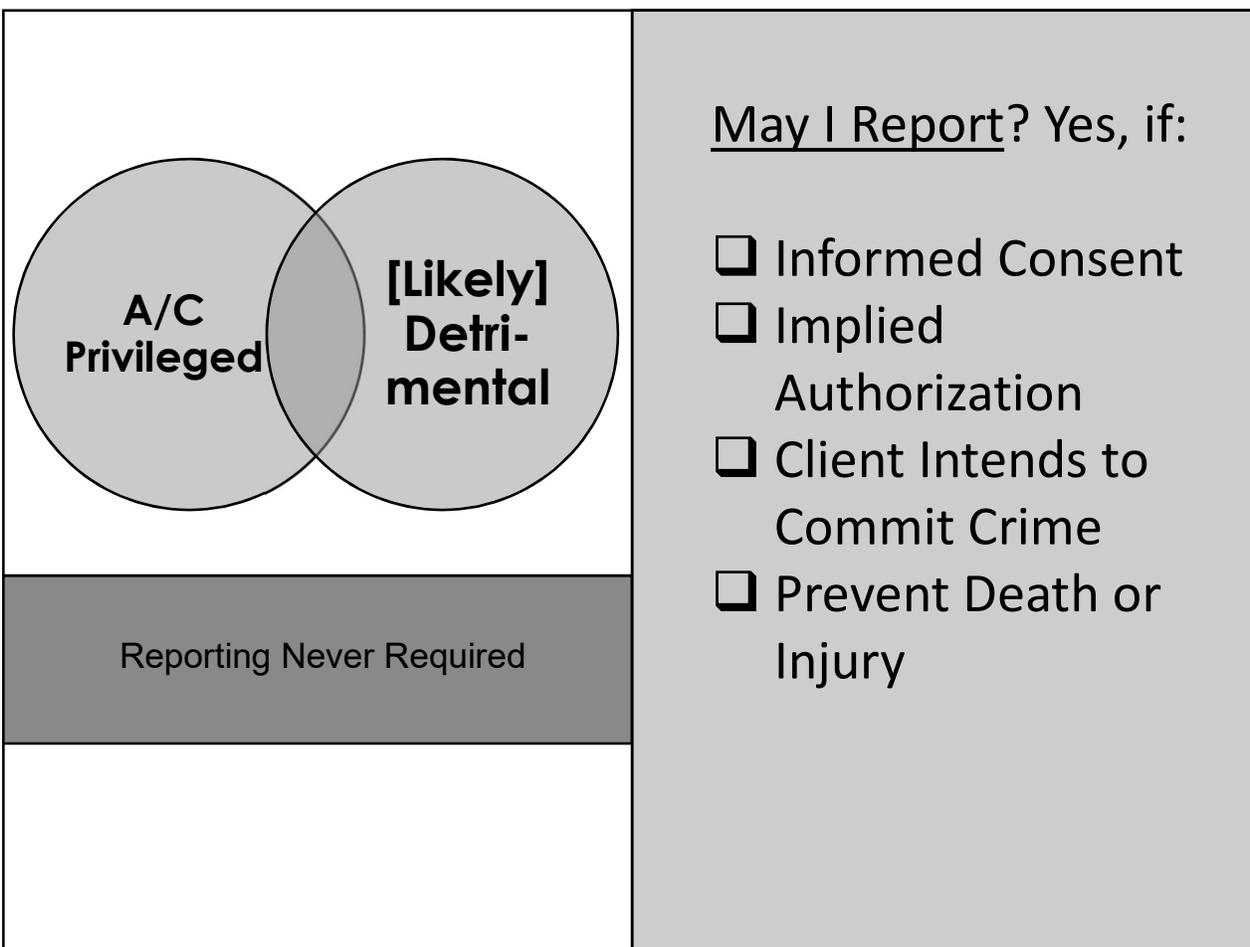
- ▶ **Attorney-Client Privileged** under ORS 40.225 (OEC 503)
- ▶ **Information communicated during representation that is *detrimental* to client** if disclosed (reconciles RPC 1.6 duty)

Lawyer Confidences—RPC 1.6

[information relating to the representation of a client]







Some examples

- ▶ **Lawyer representing person charged with child abuse who admits past acts**
- ▶ **Lawyer representing person charged with child abuse who expresses intention to “pay back” child for speaking with prosecutor**

Some examples

- ▶ **Lawyer representing wife in divorce is told by wife of physical abuse by husband of their child while meeting in a crowded restaurant. Lawyer has met the husband.**
- ▶ **Lawyer representing court-appointed guardian of elderly person suspects guardian is neglecting elderly person based upon interaction with protected person**

Exception: “Reasonable Discipline”
[of a child!]

- ▶ **“Abuse” does not include reasonable discipline unless the discipline results in one of the conditions [specifically defined to constitute abuse].”**

Exception: Duplicative Reports **[child abuse only]**

- ▶ **Report already made**
OR
- ▶ **Proceeding already pending**
AND
- ▶ **Reasonable belief the information is already known**

Exception: Spiritual Treatment
[for an elder!]

- ▶ **Voluntary**
- ▶ **Through prayer**
- ▶ **Recognized church**
- ▶ **Duly accredited practitioner**
- ▶ **Reconciles “neglect” as not abuse**

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QUESTIONS AND ANSWERS ABOUT MANDATORY ABUSE REPORTING FOR LAWYERS

Oregon State Bar General Counsel's Office

Question 1: What Is Mandatory Abuse Reporting?

Four Oregon statutory schemes require certain “public and private officials” present in the state, including lawyers, to report the abuse of persons to public authorities under certain circumstances. *See* ORS 124.060 (elder abuse); ORS 419B.010 (child abuse); ORS 430.765 (person with mental illness or developmental disability); ORS 441.640 (resident of long-term care facility). Only the first two have educational requirements for lawyers. The latter two function similarly to the first two, but practitioners should note that a lawyer’s duty to report under ORS 441.640 is limited to a lawyer representing the resident or their guardian or family member. *See* ORS 441.630(6)(i).

Question 2: Why Require Mandatory Reports?

Oregon is in the midst of a demographic shift. As baby boomers age, our population as a whole is aging. Each year, over 50,000 Oregonians turn 65 years old. The median age of Oregon’s population was 30.3 in 1980, but is forecast to rise to 39.7 by 2020. With advancing age come declining health and greater reliance on family members, caregivers and social services. And elder abuse is a significant problem. In 2014, DHS investigated and substantiated over 2,500 instances of elder abuse in Oregon. Nationally, one in ten elders living at home is subject to abuse, neglect, or exploitation. Abuse reporting helps the legislature assess the need for increased social services as the population ages.

At the same time, child abuse remains alarmingly prevalent. The field has undergone a sea change since child abuse was explicated as a medical diagnosis in the 1960s. Scientists now know that child abuse exacts a toll over the rest of a child’s lifetime, causing many abused children to adopt risky coping behaviors as adults and to develop related health problems. The

child abuse reporting statute expresses the state's policy that all citizens have a responsibility to prevent such abuse and to protect children from harm. The statute encourages voluntary reporting in situations in which reporting is not required. Mandatory reporters are a critical link in the state's system of child protection, accounting for about three-quarters of the child abuse reports received by Oregon authorities.

Question 3: What Are Lawyers Required To Do?

Lawyers are included in the definitions of "public or private officials" who have duties under Oregon law to report both child abuse and elder abuse. ORS 124.050(9); ORS 419B.005(5). Many others are also included. *Id.* Similar laws exist in every state, and a lawyer traveling to another state should consider whether that state's law applies to them when present in the state. It appears that Oregon's law applies to any licensed attorney present in the state, not just members of the Oregon State Bar.

Abuse reporting is a 24-hour-per-day, seven-days-per-week responsibility. It is not limited just to information acquired in your professional practice. Reporting is required whenever a mandatory reporter has "contact" with an abuser or a victim and has "reasonable cause" to believe that abuse has occurred. ORS 124.060; ORS 419B.010(1). Voluntary reports are encouraged where possible but are not required. ORS 419B.007; OAR 411-020-0020(2).

The duty to report child abuse is personal to the mandatory reporter. *See* ORS 419B.010(4). A mandatory reporter is required to report even if his or her employer has internal policies or procedures for addressing reports of child abuse. Failure to report as required by the statute is a Class A violation. ORS 124.990; ORS 419B.010(5). The penalty for a Class A violation is a maximum fine of \$2,000. ORS 153.018(2)(a).

Oregon Rule of Professional Conduct (RPC) 1.6(a) prohibits a lawyer from revealing information relating to the representation of a client. RPC 1.6(b)(5) permits, but does not require, a lawyer to disclose information relating to the representation of a client when required by law. A lawyer may report abuse as required by law without violating the lawyer's ethical duty of confidentiality to a client.

Note that when one of the exceptions to reporting applies (Question 8, below), the abuse reporting laws do not require reporting, and therefore would not permit a lawyer to disclose information protected by RPC 1.6. In addition, RPC 1.6(b)(5) permits disclosure only to the extent required by law; it does not give a lawyer permission to reveal information that the law does not require to be reported.

Question 4: What Is “Reasonable Cause?”

There are no reported cases applying or interpreting this term specifically in connection with the abuse reporting statutes. The Department of Human Services interprets “reasonable cause” in related statutes as being equivalent to “reasonable suspicion.” *A.F. v. Dep’t of Human Res. ex rel. Child Protective Servs. Div.*, 251 Or App 576, 590, 98 P3d 1127 (2012); *Berger v. State Office for Services to Children and Families*, 195 Or App 587, 590, 98 P3d 1127 (2004). In that context, “[r]easonable suspicion’ means a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.” The agency rule further explains:

“The belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.”

OAR 413-015-0115(37). Similarly, “reasonable suspicion” for an officer to stop an individual in the criminal law context is defined as “a belief that is reasonable under the totality of the circumstances existing at the time and place the peace officer acts.” ORS 131.605(5). The standard is an “objective test of observable facts” and requires the officer “to point to specific articulable facts that give rise to a reasonable inference that a person has committed a crime.” *State v. Ehly*, 317 Or 66, 80, 854 P2d 421 (1993).

By contrast, the standard of “probable cause” for arrest in the criminal law context is a higher standard than that of “reasonable suspicion.” “Probable cause” is defined by ORS 131.005(11) as a “substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it.” In *State v. Childers*, 13 Or App 622, 511 P2d 447 (1973), the court held that a police officer did not have probable cause to make a warrantless search for marijuana since he was uncertain whether he had smelled it. The court cited the probable cause standard as the existence of circumstances that would lead a reasonably prudent person to believe that an event had occurred, and distinguished it from “mere suspicion or belief” *Id.* at 629.

Interpreting “reasonable cause” in the context of obtaining a subpoena for bank records under ORS 192.565(6), the court in *State v. McKee*, 89 Or App 94, 99, 747 P3d 395 (1987), held that a showing of reasonable cause required a recital of known facts, not mere conclusory statements. In another case, a merchant was found to have reasonable cause to detain a suspected shoplifter when the merchant saw the person leaving the store with unpaid-for merchandise partially concealed in a pocket. *Delp v. Zapp’s Drug & Variety Stores*, 238 Or 538, 395 P2d 137 (1964).¹

A potential “floor” for “reasonable cause” is found in ORS 124.075 and ORS 419B.025, which provide immunity to abuse reporters for criminal and civil liability. In order to qualify for immunity, the reporter must “participat[e] in good faith” in the reporting process, and have “reasonable grounds” for the making of the report. Outside the client representation context, attorneys are well advised to use this standard for determining when to make a report of potential abuse.

Question 5: What Is “Comes In Contact?”

“Comes in contact” is a more unfamiliar phrase that is also not defined in the statutes or case law. A dictionary definition of “contact” includes “a touching or meeting” and “association or relationship” (as in physical or mental or business or social meeting or communication).

¹The statute applied in *Delp*, which allowed merchants to detain suspected shoplifters, has since been amended to require “probable cause” as opposed to “reasonable cause.” See ORS 131.655(1).

Webster's Third New International Dictionary 490 (unabridged ed 1993). That definition, and common usage, suggest that a lawyer is required to report elder abuse only when the lawyer has had some kind of physical or associational contact with a person who has abused an elder or with an elder who has been abused. This does not necessarily mean "in person" contact; telephone or even email or written contact would likely suffice.

The "comes in contact" requirement does not appear to modify the "reasonable cause" requirement. In other words, the statute does not appear to require reporting only when the lawyer learns of the abuse directly from the victim or the abuser. Reliable second- or third-hand information may provide reasonable cause to believe that abuse has occurred; reporting would then be required if the lawyer had come in contact with either the abuser or the victim. For example, if a neighbor tells a lawyer that she heard from another neighbor that an elder living down the street (with whom the lawyer has occasional contact) appears to have been abused, the lawyer may have reasonable cause to believe that abuse occurred if the lawyer believes the neighbors are reliable sources of information.

It is sometimes suggested, under a broad reading of the statute and its purpose, that "contact" includes knowledge of abuse even without any physical or associational contact with the victim or the abuser. The Attorney General does not interpret the statute so broadly, opining in another context that "physicians, psychologists and social workers who serve as members of the board of directors of a self-help child abuse prevention organization, but who do not provide direct services, are not required to report suspected child abuse when they acquire that information indirectly in their official capacities as board members." Attorney General Letter of Advice to Sen Margie Hendriksen (OP-5543) (June 12, 1984). The basis for the opinion lies primarily in the fact that the list of mandatory reporters in Oregon consists of professionals and service providers who are most likely to come into direct contact with victims or perpetrators of child abuse. "We believe that if the drafters of [the statute] had intended to impose a mandatory reporting duty, violation of which is punishable by a substantial fine ... , upon persons who merely have knowledge about child abuse, from whatever source, they would have said so clearly." *Id.*

Question 6: What Is Elder Abuse?

The elder abuse reporting statute identifies the types of conduct that constitute elder abuse:

- Infliction of Pain or Physical Injury: Pain or injury caused by other than accidental means or apparently inconsistent with the explanation given for it. According to regulation, this includes force-feeding and all physical punishments. OAR 411-020-0002(a)(B)(ii). Physical abuse is presumed to injure and inflict pain upon someone who is non-responsive. See OAR 411-020-0002(a)(C).
- Abandonment or Neglect: This includes desertion as well as withholding caretaking responsibilities.
- Sex Abuse: Commission of a crime enumerated in the statute, including both public and private indecency.
- Verbal Abuse: Threatening physical or emotional harm by words or gestures. Again, it does not matter whether the victim can comprehend.
- Financial Exploitation: Defined in ORS 124.050(4). Wrongful taking of an elder's property; a threat of taking that causes alarm to an elder; stealing or transferring account funds without authorization (even if jointly held); failing to use the elder's resources effectively for their support.
- Involuntary Seclusion: For convenience or discipline.
- Wrongful Use of Physical or Chemical Restraints: Authorized medical or legal uses are excluded.

ORS 124.050(1).

DHS has published a summary of the warning signs of abuse at <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/ADULT-ABUSE/Pages/signs.aspx>. That said, lawyers, like many mandatory reporters, may not be experts in identifying abuse, and they are not expected to be. The law does not require lawyers to conduct investigations into suspected abuse, but lawyers should make reasonable inquiries where possible to follow up on initial observations or information that appears to involve elder abuse, to ensure that they have

“reasonable cause” to believe that abuse has occurred. The intent of the statute is to get at-risk seniors into a regulatory system where the circumstances will be evaluated and, as necessary, addressed by qualified professionals. Hence, the standard for reporting is only “reasonable cause,” not “certainty.”

Question 7: How Is A Lawyer Expected To Identify Child Abuse?

The child abuse reporting statute likewise identifies the types of conduct that constitute child abuse:

- Criminal assault or any physical injury to a child caused by other than accidental means, including any injury at variance with the explanation given for it.
- Any observable and substantial mental injury caused by cruelty to a child.
- Rape or sexual abuse—commission of a crime enumerated in the statute.
- Sexual exploitation, including any use of a child in a live or recorded erotic performance, or allowing a child to participate in an act of prostitution.
- Negligent treatment or maltreatment of a child.
- Threatened harm to a child.
- Buying or selling a child.
- Permitting a child to enter or remain in a place where methamphetamines are being manufactured.
- Unlawful exposure to a controlled substance that subjects a child to a substantial risk of harm.

ORS 419B.005(1)(a). “Abuse” does not include reasonable discipline unless the discipline results in one of the conditions listed above. ORS 419B.005(1)(b).²

Lawyers, like many mandatory reporters, may not be experts in identifying child abuse and are not expected to be. The intent of the statute is to get at-risk children into a system where the circumstances will be evaluated and, as necessary, addressed by qualified professionals. The standard for reporting is only “reasonable cause,” not “certainty.” Abuse that

² For all intents and purposes, the statute is referring to spanking that does not leave a mark or injury of any kind. More extreme or “creative” punishments often constitute abuse.

leaves physical marks is relatively easy to recognize. Some forms of neglect are also visible, such as malnutrition or young children left unattended. Other kinds of child abuse, such as mental injury, may be more difficult to detect, particularly where contact with the child is limited. The mandatory reporting law does not require lawyers to conduct investigations into suspected child abuse, but lawyers should make reasonable inquiry where possible to follow up on initial observations or information that appears to involve child abuse to ensure that they have “reasonable cause” to believe that abuse has occurred.

The Oregon Department of Human Services publishes a booklet entitled *What You Can Do About Child Abuse* that lawyers may find helpful. It is available on-line at <http://dhsforms.hr.state.or.us/Forms/Served/DE9061.pdf>. DHS will also answer questions and consult about whether a situation should be reported.

Question 8: Are There Any Exceptions To The Reporting Requirement?

There are three exceptions to each statutory reporting requirement. Two of them are the same in child and elder abuse contexts. The third one is different. The first two:

- Lawyers are not required to report information communicated by a person if the communication is privileged. In addition to the evidence code, the child abuse reporting statute protects as well communications that are privileged under ORS 419B.234(6).
- A lawyer is also not required to report abuse based on information communicated to the lawyer “in the course of representing a client, if disclosure of the information would be detrimental to the client.” Note that this language captures part, but not all, of the information protected by RPC 1.6 on client confidences.

Next:

- No official is required to report *child* abuse if the information about the abuse is acquired “by reason of a report” or “by reason of a proceeding arising out of a report” already made under the abuse reporting statute, if the official “reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.” ORS 419B.010(2) (emphasis added).

And finally:

- “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”
ORS 124.095 (emphasis added).

A. Privileged Communications.

The first exception relates to statutory privileges. Lawyers are not required to report information that is “privileged under ORS 40.225 to 40.295.” ORS 40.225 is OEC 503, the lawyer-client privilege.³ The reference, however, encompasses thirteen other privileges: psychotherapist-patient (OEC 504), physician-patient (OEC 504-1), nurse-patient (OEC 504-2), school employee-student (OEC 504-3), clinical social worker-client (OEC 504-4), husband-wife (OEC 505), clergy-penitent (OEC 506), counselor-client (OEC 507), stenographer-employer (508A), public officer (OEC 509), disabled person-sign language interpreter (OEC 509-1), non-English speaking person-interpreter (OEC 509-2), and informer (OEC 510).⁴

B. Information Detrimental to Client if Disclosed.

The second exception to mandatory reporting applies only to lawyers, and tracks to some extent a lawyer’s ethical obligation to protect confidential client information. Lawyers are prohibited by RPC 1.6(a) from revealing “information relating to the representation of a client.” “Information relating to the representation of a client” is defined in RPC 1.0(f) as both “information protected by the lawyer-client privilege under applicable law” and “other

³A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. A “confidential communication” is one that is “not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” Confidential communications include those (1) between the client or the client’s representative and the client’s lawyer or a representative of the lawyer, (2) between the client’s lawyer and the lawyer’s representative, (3) by the client or the client’s lawyer to a lawyer representing another in a matter of common interest, (4) between representatives of the client or between the client and a representative of a client, or (5) between lawyers representing the client. OEC 503.

⁴ Also included is OEC 512, “privileged matter disclosed under compulsion or without opportunity to claim privilege.”

information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.”⁵

Clearly then, “information relating to the representation” is not limited to information that is privileged because communicated by the client. Information protected under RPC 1.6 includes information learned from witnesses and other third parties as well as information imparted by the client that is, for some reason, not covered by the privilege. All that is required under RPC 1.6 is that the information be gained during the course of the professional relationship between the lawyer and the client, and either that the client has requested it be “held inviolate” or that it would be embarrassing or detrimental to the client if revealed.

In creating a statutory exception for only some of the information that would be protected by RPC 1.6, the legislature limited the reporting exception to information that would be detrimental (not merely embarrassing) to the client if disclosed. This appears to be the legislature’s way of reconciling the sanctity of the lawyer-client relationship with the interest of protecting children. The legislature appears to have concluded that mere embarrassment to a client is not sufficient justification for the lawyer to ignore abuse.

C. Information Learned from an Official Report.⁶

The final exception to the child abuse reporting requirement applies to all mandatory reporters. Reporting is not required of information learned “by reason of a report” or “by reason of a proceeding arising out of a report” made under the mandatory child abuse reporting statute. The exception applies if the reporter “reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.” This exception appears to be the legislature’s attempt to clarify that mandatory reporters do not need to report when the only information they have comes from an existing report. The language is not crystal clear, however, as it suggests that reports may be made and

⁵ These are the definitions, respectively, of “confidences” and “secrets” from former DR 4-101.

⁶ This exception does not apply in the elder abuse context.

proceedings may arise therefrom, yet the information might not be known to DHS. Although it is difficult to imagine a situation where that could actually be the case, a lawyer who learns about child abuse (involving a person with whom the lawyer has had contact) from another reporter's report would be prudent to confirm that DHS is aware of the situation. If DHS cannot confirm its existing knowledge of the abuse, then the lawyer should report.

The effect of these statutory exceptions to the duty to report is that most of the information a lawyer will be required to report will be that learned outside the lawyer's "official capacity." For instance, witnessing an act of child abuse in a public place will trigger the reporting obligation, despite the fact that the lawyer may not have a lot of information to report. Similarly, information that a non-client friend or neighbor is abusing a child or is a victim of abuse must be reported.

D. Treatment by Spiritual Means Through Prayer.⁷

This exception is not elaborated in case law or in regulation. Practitioners should note that it is very narrow. The treatment must be "voluntary"; beliefs of the caregiver are irrelevant to the determination of whether reporting is required. The treatment must be "through prayer." It must be "in accordance with the tenets and practices of a recognized church or religious denomination" and conducted "by a duly accredited practitioner" of the church. Here as elsewhere, attorneys should err on the side of reporting and letting DHS evaluate the situation.

Question 9: What If Someone Expresses the Intent to Commit an Act of Abuse?

The statutes mandate reporting only when there is reasonable cause to believe that abuse has already occurred. It does not require advance reporting of possible future abuse, with limited exceptions. A threat of future abuse can be "verbal abuse" of an elder. "Verbal abuse" includes "threatening significant physical harm or threatening or causing significant emotional harm to an adult" OAR 411-020-0002(1)(d)(A). Also, a threat of future abuse can

⁷ This exception does not apply in the child abuse context.

be a threat of harm to a child, “which means subjecting a child to a substantial risk of harm to the child’s health or welfare,” ORS 419B.005(1)(a)(G), and be reportable abuse for that reason.

If the situation does not fit within either of those narrow categories, reporting may still be possible. RPC 1.6(b)(1) permits a lawyer to reveal confidential information, to the extent the lawyer reasonably believes necessary, “to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime.” There is also no lawyer-client privilege under OEC 503(4)(a) “if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.” RPC 1.6(b)(2) permits a lawyer to reveal information otherwise protected to the extent the lawyer reasonably believes necessary “to prevent reasonably certain death or substantial bodily harm,” whether or not a crime is involved. When used in reference to degree or extent, “substantial” denotes “a material matter of clear and weighty importance.” RPC 1.0(o).

It is not clear that all incidents of abuse identified in the statute constitute crimes. A lawyer whose client has expressed a clear intention to commit abuse in the future should ascertain first whether the intended conduct is a crime, or if it puts a person at risk of reasonably certain death or substantial bodily harm. If so, the lawyer may disclose information necessary to prevent the intended conduct.

A voluntary report of suspected future abuse that is not required under ORS 124.060 is subject to the same statutory confidentiality and immunity as a mandatory report. See ORS 124.075; ORS 419B.025; ORS 419B.035.

Question 10: Are Lawyers Obligated to Report Abuse Occurring Outside Of Oregon?

While all states have adopted some form of elder abuse prevention laws, the laws are not uniform and lawyers are not mandatory reporters in all jurisdictions. Lawyers who are licensed in multiple jurisdictions should be attentive to the statutory requirements of each jurisdiction as well as to the interplay between those statutory requirements and the disciplinary rules to which the lawyer is subject.

The scope of Oregon’s mandatory abuse reporting laws is not clear with respect to incidents occurring outside of Oregon. Nothing in the statute can be read to limit reporting only to incidents occurring within the state. The language of the statute sweeps broadly to include all victims within the protected populations and their abusers. A lawyer who wishes to act most cautiously should make a report to DHS of the out-of- state incident and allow DHS to determine whether and how to deal with the information. Reporting in that circumstance does not violate any ethical responsibility of the lawyer or violate any right of the persons involved. It is consistent with the policy behind both statutes and regulations that encourage voluntary reporting. *See, e.g.,* OAR 411-020-0020(2).

Question 11: What Type Of Report Is Required And To Whom Must It Be Made?

The abuse reporting statutes require that reports be made “immediately,” ORS 124.065(1); ORS 419B.010(1), and that the report must be “an oral report by telephone or otherwise.”⁸ ORS 124.065(1); ORS 419B.015. Reports must be made 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 located at the time of the contact. Both ORS 124.050(6) and ORS 419B.005(4) define a law enforcement agency to mean:

- A city or municipal police department;
- A county sheriff’s office;
- The Oregon State Police;
- A police department established by a university; or
- A county juvenile department.

The report must contain, if known:

- the names and addresses of the victim and the persons responsible for the victim’s care;
- the child’s age, in the case of a child victim;
- the nature and extent of the abuse, including any evidence of previous abuse;

⁸ The statewide telephone number for reporting suspected abuse is 1-855-503-SAFE (7233).

- the explanation given for the abuse; and
- any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

ORS 124.065(1); ORS 419B.015(1). DHS and law enforcement are required to notify each other when receiving a report of possible crime or of any child abuse. ORS 124.065(2); ORS 419B.015(1)(b), (2).

Question 12: Are Elder Abuse Reports Confidential?

Notwithstanding Oregon’s public records law, the reports and records compiled under the abuse reporting laws are confidential and are not accessible for public inspection.

ORS 124.090(1); ORS 419B.035. DHS is required to make the reports available in some circumstances and permitted to do so in other circumstances. ORS 124.090(2); ORS 419B.035. Recipients of records under DHS’s mandatory or permissive disclosure authority are also required to maintain the confidentiality of the records. ORS 124.090(3); ORS 419B.____.

The confidentiality is not absolute, as a reporter may be required to testify in court proceedings relating to the report. In criminal proceedings, the alleged abuser’s constitutional right to confront witnesses would override the statutory confidentiality.

Confidentiality may be enhanced by reporting anonymously. While there is no requirement in the statutes that reporters identify themselves, it is also clear that the statutes do not contemplate anonymous reporting, and it is likely not preferred by DHS. Law enforcement and DHS will accept anonymous reports. Because of the liability that can result from not reporting, lawyers should weigh the desire for confidentiality with the possible need for proof that a report was in fact made as required.

Warning Signs and Definitions for Vulnerable Adults

- ADULT ABUSE
- CENTRALIZED ABUSE MANAGEMENT SYSTEM (CAM)
- REPORTS & PUBLICATIONS
- PREVENTION & INVESTIGATIONS
- PROVIDER RESOURCES
- WARNING SIGNS & DEFINITION**

For more detailed information about abuse and neglect see: [Oregon Administrative Rule 411-020-0002](#)

Physical abuse

Physical abuse is any physical injury to an adult caused by other than accidental means that may result in bodily injury, physical pain, or impairment.

Warning signs of physical abuse:

- Cuts, lacerations, punctures, wounds
- Bruises, welts, discolorations, grip marks
- Any unexplained injury that doesn't fit with the given explanation of the injury
- Any injury incompatible with the person's history of unexplained injuries
- Any injury which has not been properly cared for (sometimes injuries are hidden on areas of the body normally covered by clothing)
- Dehydration and/or malnourishment without illness-related cause
- Unexplained loss of weight
- Burns, possibly caused by cigarettes, caustics, acids or friction from ropes or chains

Neglect

Neglect is the failure of an individual who is responsible to make a reasonable effort to protect an adult from abuse or to provide the care, supervision, or services necessary to maintain the physical health and emotional well-being of an adult that creates a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity.

NOTE: 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 shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in [Oregon Administrative Rule 411-020-0002](#).

Warning signs of neglect:

- Dirt, fecal/urine smell or other health and safety hazards in adult's living environment
- Leaving an adult in an unsafe or isolated place
- Rashes, sores, lice on the adult
- Malnourishment or dehydration and/or sudden weight loss
- Untreated medical condition
- Soiled clothing or bed linens
- Poor skin condition or poor skin hygiene

Self-neglect

Self-neglect is the inability of a person to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

Abandonment

Abandonment is desertion or willfully leaving an adult alone by a caregiver that would place the adult in serious risk of harm. It is a specific form of neglect.

Warning signs of abandonment:

- The desertion at a public location
- A person's own report of being abandoned

Verbal or emotional abuse

Verbal or emotional abuse includes threatening significant physical harm or threatening or causing significant emotional harm to an adult through the use of: derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

Warning signs of verbal or emotional abuse:

- Humiliating, insulting, or threatening language directed at the person
- Being emotionally upset or agitated
- Being extremely withdrawn and non-communicative or non-responsive
- Unusual behavior usually attributed to dementia (e.g., sucking, biting, rocking)
- An adult's report of being verbally or emotionally mistreated

Financial exploitation

- 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
- 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
- Misappropriating or misusing any money from any account held jointly or singly by an adult
- Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

Warning signs of financial exploitation:

- Unusual or inappropriate activity surrounding investment properties or in bank accounts, including the use of ATM cards, to make large or repeated withdrawals
- Signatures on checks, etc. that do not resemble the person's signature, or signatures when the person cannot write
- Power of attorney given, or recent changes in or creation of a will or trust, when the person is incapable of making such decisions
- Unpaid bills, overdue rent, utility shut-off notices
- Excessive spending by a caregiver on himself for new clothing, jewelry, automobiles
- Lack of spending on the care of the person, including personal grooming items
- Missing personal belongings, such as art, silverware or jewelry
- Recent sale of assets and properties

The Attorney General's office also has a [consumer hotline for financial fraud issues](#).

Sexual abuse

- Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Failure to object does not mean an expression of consent.
- Sexual harassment or sexual exploitation of an adult, exposing an adult to, or making an adult the subject of sexually explicit material or language.
- Any sexual contact between an employee or volunteer of a facility or a caregiver and an adult served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between an adult and a caregiver who is the spouse or domestic partner of the adult.

Warning signs of sexual abuse:

- Unexplained vaginal or anal bleeding
- Torn or bloody underwear
- Bruised breasts
- Venereal diseases or vaginal infections
- Sudden changes in the emotional or psychological state of the person
- Abrupt changes in responses or behavior around certain people
- The person discloses that they've been abused

Involuntary seclusion

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

NOTE: In a facility, emergency or short-term, monitored separation from other residents may be permitted if used for a limited period of time when: used as part of the care plan after other interventions have been attempted; used as a de-escalating intervention until the facility can evaluate the behavior and develop care plan interventions to meet the resident's needs; or the resident needs to be secluded from certain areas of the facility when their presence in that specified area would pose a risk

to health or safety.

Warning signs of involuntary seclusion:

- An adult's report of not being allowed to see or talk with people who they would reasonably see or talk to
- Kept away from where others can go
- Not allowed to use the telephone
- Not allowed to receive or send mail

Wrongful restraint

A wrongful use of a physical or chemical restraint includes situations where:

- A licensed health professional has not conducted a thorough assessment prior to implementing a licensed physician's prescription for restraint;
- Less restrictive alternatives have not been evaluated prior to the use of the restraint; or
- The restraint is used for convenience or discipline.

NOTE: Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

Warning signs of physical or chemical restraint:

- Being sedated
- Going to bed at an unusually early time or uncharacteristically early bedtime
- Bruises or remarks on both wrists, both ankles, or a strip-like mark or bruise across the chest
- An adult's report of being tied up or sedated or not allowed to move

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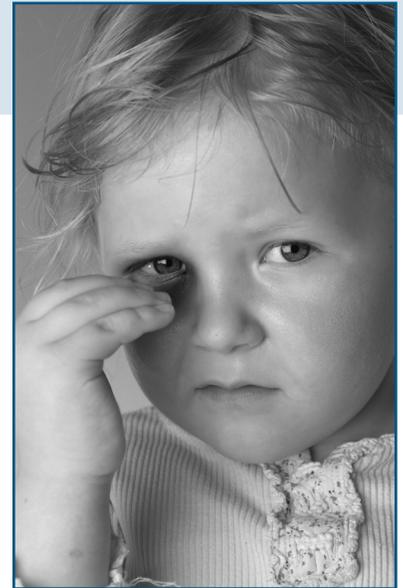
Physical abuse

What is physical abuse?

Oregon law defines physical abuse as any injury to a child that is not accidental.

Most parents do not intend to hurt their children, but abuse is defined by the effect on the child, not the motivation of the parents.

In Oregon in FFY 2016 1,217 children were found to have been physically abused.



Trauma to the eyes is often the result of head injuries.

What about bruises?

Bruises on bony surfaces such as knees, shins, foreheads or elbows are more likely to be accidental than those occurring on the cheeks, buttocks or stomach.

Most falls produce one bruise on a single surface, while abusive bruises frequently cover many areas of the body.

Any bruising seen on babies who are not yet mobile is suspicious.

What about head and facial injuries?

Injury to the skull and brain is the primary cause of child abuse deaths. Most serious internal head injuries during the first year of life are the result of physical abuse.

Trauma to the eyes is often the result of head injuries. This could be from a direct blow to the eyes or be the result of other actions, such as shaking a child, leading to retinal hemorrhage. Injury to both eyes is a possible indicator of abuse because accidental injuries usually occur on one side of the face.

The mouth is a common target for abuse. Injuries to this area include bruises, burns, split lips, broken teeth and even fractures of the jaw.

What about broken bones and injured joints?

You should be suspicious of abuse when:

- Unsuspected fractures are “accidentally” discovered in the course of an examination.
- The injury is not explained by the history given.
- Spiral fractures, which indicate twisting, are found.
- Multiple fractures exist, especially when symmetrical.
- Multiple fractures exist in various stages of healing.
- Skeletal injuries are accompanied by injuries (for example, burns) to other parts of the body.

What about poisoning?

Some parents may punish children by forcing them to swallow toxic amounts of chemicals or food.

Some problems — any of which may be fatal — are:

- Water — Drinking huge quantities of water causes seizures, convulsions, confusion, lethargy and coma.
- Hot peppers — Cause damage to the mucous membranes of the mouth and stomach and injure the nervous system. Hot peppers can also become clogged in the child’s throat, leading to breathing problems.
- Ground pepper — Becomes clogged in the throat or lungs, causing breathing problems.
- Laxatives — Cause severe dehydration, fever and bloody stools.
- Household products — Various substances are abused, including toilet bowl cleaner, lighter fluid, detergents and oil.

What about burns and scalds?

Although accidental burns may happen in any household, too many or improperly handled accidents can be signs of neglect.

It is not uncommon for a child to brush against a cigarette that is being held in someone else's hand. These burns are usually found on the child's face, arms or trunk, depending on the height of the child and the height of the person holding the cigarette.

"Doughnut" burns on the child's buttocks are an indication that the child's buttocks may have been pressed against the bottom of the bath tub of hot liquid so that part of the buttocks were not burned.

"Stocking" burns are those that result from a foot or hand dunked into scalding liquid. The skin is usually burned evenly.

"Scattered" burns can be caused by pouring or throwing hot liquid. These burns show varying levels of injury.

What about internal injuries?

Only a small percentage of child abuse cases report injuries to internal organs. However, internal injuries are hard to identify in child abuse cases and may be one of the underlying causes of death or may make a child more susceptible to pneumonia or other infection that may cause death.

Although there are no absolute guidelines for symptoms of internal injuries, here are some common indicators:

- Pain in stomach, chest or any internal area;
- Bruises on the chest or stomach;
- Distended, swollen abdomen;
- Tense abdominal muscles;
- Labored breathing;
- Severe chest pain while breathing;
- Nausea or vomiting (especially blood).

What is Intentional Traumatic Brain Injury?

Intentional Traumatic Brain Injury describes a head injury caused by shaking the child severely or striking a child's head against a surface. Many parents do not understand that these actions can cause severe brain injury, blindness and even death.

The most common injuries are:

- Blood clots around the brain;
- Hemorrhages of the retina;
- Fractures in the growing portion of the bone;
- Injury to the brain;
- Bruises on the extremities or bruising and injury of the chest, where the child was held while being shaken.

Is spanking child abuse?

Although not recommended, spanking is not abuse. However, a spanking that leaves marks or bruises on a child might be abuse. Spanking a baby is always a concern.



Most parents do not intend to hurt their children, but abuse is defined by the effect on the child, not the motivation of the parents.

Sexual abuse and sexual exploitation

What is child sexual abuse?

Child sexual abuse occurs when a person uses or attempts to use a child for sexual gratification. This includes incest, rape, sodomy, sexual penetration, fondling, voyeurism, etc.

In Oregon in FFY 2016, 1,045 children were found to have been sexually abused.



A father who is abusing his daughter may warn her if she tells anyone, the family will be broken up and everyone will blame her.

What is fondling?

Fondling includes touching sexual parts of the body, such as breasts, genitals or buttocks. This may include an adult having a child touch the sexual parts of his body.

What is sexual contact?

Sexual contact includes rape, sodomy, incest, sexual penetration, etc.

What is sexual harassment?

Sexual harassment includes intimidating or pressuring a child for sexual activities.

What are exposure and voyeurism?

These include someone exposing himself to a child, or exposing the genitals of a child, for the adult's sexual gratification.

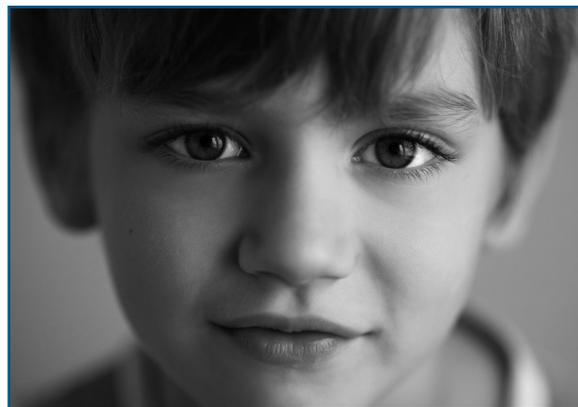
Why do children keep quiet about being sexually abused?

Persons who sexually abuse children rely on many methods to force children to keep quiet. The abuser may be subtle, telling the child he or she is doing it for her own good or promising her favors or gifts. Or he may be more blatant, such as a father warning his daughter if she tells anyone, the family will be broken up and everyone will blame her.

The abuser may convince the child she is an equal partner, that he has special affection for her and will be blamed if disclosure is made.

Many abusers use threats, telling the child his pets will be hurt, that his siblings will be targeted, or even the child himself will be killed if he tells.

Children need adults to provide their basic needs: food, a place to live, clothing, access to family and loved ones. Abusers deliberately exploit that dependency to make children submit to them.



Research and experience have shown that children very rarely lie about the details of a sexual act that they have not experienced.

How often do children lie about being abused?

Research and experience have shown that children very rarely lie about the details of a sexual act that they have not experienced. It is much more common for adults to misunderstand or misconstrue a situation.

As a result, the child often blames herself for what is happening to her and feels guilty and depressed. She may create imaginary companions. Some children become aggressive and angry. Others turn to drugs and alcohol.

What is sexual abuse of teens?

Oregon law does not make all sexual activity of a teen under the age of 18 illegal.

The law includes defenses in some circumstances if the actor is less than three years older than the victim. Law enforcement and district attorneys will need to analyze each situation on a case-by-case basis.

For teens, evidence of sexual activity may be a potential indicator of sexual abuse. Consenting sexual relationships imply that both partners have the ability and capacity to make an informed choice without fear of harm or pressure. However, many teens do not have a clear understanding of the difference between consensual and abusive relationships.

Factors to consider in determining whether a relationship may be abusive include:

- If force is used;
- If there is impaired mental or emotional capacity;
- If drugs or alcohol affect the ability to make a reasonable choice;
- If there is manipulation, intimidation, implied threats or other forms of coercion;
- If there is a distinct power differential or a significant age difference.

What is sexual exploitation?

Sexual exploitation is using children in a sexually explicit way for personal gain; e.g., to make money, to obtain food stamps or drugs, or to gain status. It also includes sex trafficking and using children to create pornography.



Many teens do not have a clear understanding of the difference between consensual and abusive relationships.

Neglect

What is neglect?

Neglect is failing to provide adequate food, clothing, shelter, supervision or medical care. Chronic neglect is a persistent pattern of family functioning in which the parent or caregiver does not sustain or meet the basic needs of a child. This results in an accumulation of harm that can have long term effects on the child's overall physical, mental or emotional development.

Neglect is the most common form of abuse and may have long-term effects. In FFY 2016, 6,590 children were victims of neglect.

For FFY 2016, neglect was the most common contributors to child fatalities.

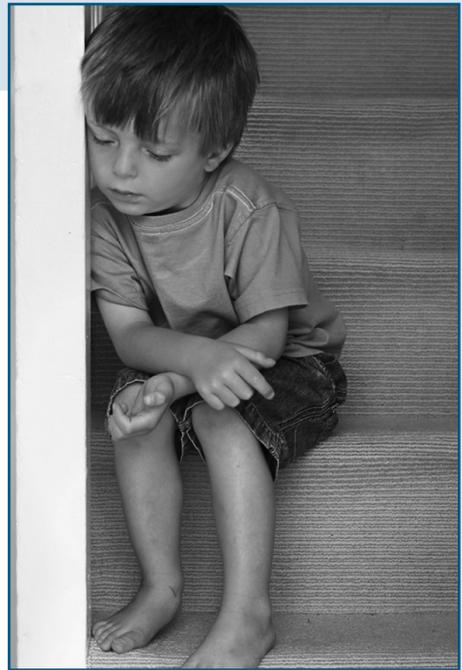
What are the standards for supervision and protection?

Parents must provide adequate supervision, care, guidance and protection to keep children from physical or mental harm. Parents must also provide appropriate treatment for children's problems.

Children will have minor injuries during childhood. When accidental injuries are frequent, they may be the result of neglect.

Neglect includes exposing a child to illegal activities such as:

- Encouraging a child to participate in drug sales, theft, etc.;
- Exposing a child to parental drug abuse, theft, etc.;
- Encouraging a child to use drugs or alcohol.



Failure to Thrive is a syndrome characterized by chronic malnutrition of an infant or young child.

What are the standards for child care?

Safe child care includes:

- A designated person who can take care of a child's individual needs;
- A plan to reach the parent in an emergency.

A child should not be left alone in situations beyond his ability to handle.

Each child must be looked at individually to make sure he or she is physically and emotionally able to handle the given responsibility. The law does not specify the age at which a child can be left alone. However, a child younger than age 10 cannot be left unattended for such a period of time as may likely endanger the child's health or welfare (ORS 163.545).

What are the standards for food and clothing?

Children need food that allows them to grow and develop normally. Clothing and shoes should be appropriate to the environment.

What are the standards for shelter?

Children need protection from weather and safety hazards. This includes adequate heat, drinking water, sanitary facilities and space for sleeping.

What is medical neglect?

Children need adequate medical, dental and mental health care services. When a medical situation may result in serious impairment, pain or death of the child, this may be medical neglect and CPS can intervene.

Religious beliefs about spiritual care are generally honored, except when the child's life is in danger. If a parent refuses medical attention in a serious or life-threatening situation, CPS may intervene.

What is Failure to Thrive?

Failure to Thrive is a syndrome characterized by chronic malnutrition of an infant or young child. Growth is delayed and mental retardation, learning difficulties and delay in language skills are some of the long-term consequences.

Characteristics include:

- A weak, pale and listless appearance;
- Loss of body fat;
- Staring vacantly instead of smiling and maintaining eye contact;
- Sleeping in a curled up, fetal position with fists tightly closed;
- Rocking back and forth in bed as he lies on his back or banging his head repeatedly against his crib;
- Obvious delays in developmental and motor function.

What do the terms “drug exposed child” and “drug affected child” mean?

Misuse of prescription drugs or use of illegal drugs is neglect when the use directly impacts the child. While alcohol and drug use during pregnancy is never a good idea, many women do not realize the dangers drug use or addiction can present to children during pregnancy. Some affects may not be apparent at birth but can show up later.

Any alcohol or drug use by a pregnant woman means a child has been “drug exposed” during the pregnancy. When drug use creates physical, mental or behavioral problems, whether apparent at the birth of a child or as the child grows, the child may be considered “drug affected.” But these drug affects must be confirmed through medical evaluation. They can include a range of issues from major physical problems to mental or behavioral problems that emerge as late as the child’s entry into school.



Abandonment and mental injury

What is abandonment?

Abandonment is parental behavior showing intent to permanently give up all rights and claims to a child.



What is mental injury?

Mental injury and psychological maltreatment are the result of cruel or unconscionable acts or statements threatened, made, or permitted to be made by the caregiver(s), which have a direct effect on the child or it can be the caregiver's failure to provide nurturance, protection or appropriate guidance. The caregiver's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional or social well-being and functioning. In Oregon in FFY 2016, 248 children were found to be subjected to mental injury.

Some examples of mental injury include:

- Holding a child's head in the toilet as punishment;
- Stripping a child and chaining him to a tree for punishment;
- Exposing or forcing a child to repeatedly watch domestic violence against his parent or siblings;
- Shutting a child out of the family by not buying her adequate clothing or personal items. An example would be furnishing other children's rooms with nice things and keeping her bedroom empty.

Threat of harm

What is threat of harm?

Threat of harm is subjecting a child to a substantial risk of harm to his or her health or welfare. Severe harm is defined as significant or acute injury to a child's physical, sexual, psychological, cognitive, or behavioral development or functioning; immobilizing impairment; or life threatening damage.

There were 6,254 founded incidents of threat of harm in Oregon in FFY 2016.

Some examples of threat of harm are:

- A child living with or cared for by a person who has a past conviction for child abuse or neglect, and whose current behavior, condition and circumstances present a substantial threat to the safety of a child;
- A newborn whose primary caregiver's current mental or behavioral condition indicates a lack of skills necessary to provide adequate care even though the child has not suffered harm;
- A child living with a person who is involved in child pornography;
- A child whose parent or caregiver has caused death or severe harm to another child through physical abuse, and whose behaviors, conditions or circumstances have not improved.

When should domestic violence be reported as child abuse or neglect?

Domestic violence means a pattern of coercive behavior, which can include physical, sexual, economic, and emotional abuse that an individual uses against a past or current intimate partner to gain power and control in a relationship.



If you know a child is witnessing repeated or serious domestic violence and you are unsure of the impact on the child, call and consult with a CPS screener.

Domestic violence is present in all cultures, socioeconomic classes, and communities of faith. Domestic violence generally increases in intensity, severity and frequency.

The presence of domestic violence is a risk factor for children. However, not all situations of domestic violence require a report to DHS or law enforcement. DHS has the authority to intervene with families based on whether a child is being physically abused, sexually abused, neglected, suffering mental injury, or is being subjected to an activity or condition likely to result in substantial harm.

A report to DHS or law enforcement is necessary when there is reasonable cause to believe:

1. There is current domestic violence or the alleged abuser has a history of domestic violence; and
2. One of the following:
 - » There is a reason to believe the child will intervene or is intervening in a violent situation, placing him at a risk of substantial harm.
 - » The child is likely to be harmed during the violence (being held during the violence, physically restrained from leaving, etc.).
 - » The alleged abuser is not allowing the adult caregiver and child access to basic needs, impacting their health or safety.
 - » The alleged abuser has killed or inflicted substantial harm, or is making a believable threat to do so to anyone in the family, including extended family members and pets.
 - » The child's ability to function on a daily basis is substantially impaired by being in a constant state of fear.

If you believe a child is witnessing repeated or serious domestic violence and you are unsure of the impact on the child, call and consult with a CPS screener.



The presence of domestic violence is a risk factor for children.

Child selling

An additional category of abuse — child selling — was added to statute by the 1997 Oregon Legislature. This includes buying, selling or trading for legal or physical custody of a child. It does not apply to legitimate adoptions or domestic relations planning.

