

GOVERNOR'S ELDER ABUSE TASK FORCE



Final Report

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Governor

Preamble

Earlier this year, Governor Ted Kulongoski announced the creation of a public safety review team. As part of that effort, the Governor announced his intention to look at a fast rising societal problem: elder abuse and neglect (last year, the Oregon Department of Human Services, Seniors and People with Disabilities, tallied over 10,000 reported cases of abuse and neglect). Citizens from various professional disciplines were invited to be members of this task force. The Governor's charge to this group was to look at the various forms of elder abuse and neglect and make suggestions on additional measures the state could take to provide enhanced safeguards for Oregon's elderly population. The recommendations that follow supplement the existing protections that state and policy makers have already instituted. Before listing our recommendations to the Governor, the task force believes it would be helpful to provide a short history of the work already accomplished in Oregon on this issue.

History of Elder Abuse Prevention and Prosecution in Oregon

Elder abuse is a multidimensional problem that impacts a large number of Oregonians each year – much of it undetected. Experts anticipate that between 1 in 5 to 1 in 14 cases of abuse or neglect go unreported each year.

For far too long in Oregon, elder abuse went unreported and there was no response system in place if a problem was identified. With ORS 411.166, the legislature created Adult Protective Services (APS) in 1975, but the authority for APS to protect older and disabled citizens from physical and mental abuse and fraudulent practices wasn't in place until 1981 with ORS 410.020.

For most of the state – and indeed much of the nation – elder abuse was a hidden crime, and considered a family problem or a civil issue. Older people, abused in isolation, had few resources and few champions. Then, in 1992, an elderly Oregonian who had Alzheimer's disease was abandoned at a racetrack in Idaho. The perpetrator was successfully prosecuted in Washington County. This made national headlines and prosecutors rallied legislators to amend and toughen the Criminal Mistreatment Act in 1993 (ORS.163.205).

The combination of tougher laws and publicity helped to highlight this issue, but it was still very rare that a case was prosecuted. The Oregon Department of Justice created an elder abuse task force in 1994, which is still in place today. The mandate of this group continues to focus on examining the problems of elder abuse and neglect in the state. The Department of Human Services, the Attorney General's Office Task Force on Elder Abuse, community groups, financial institutions and law enforcement agencies began sponsoring statewide conferences beginning in 1995 to jointly train law enforcement, prosecutors, social workers and health care providers on identifying, investigating and prosecuting the various facets of elder abuse and neglect.

Starting in 1999, prosecutors began to ramp up their activities through a voluntary system of “multidisciplinary teams” on elder abuse, modeled after child abuse teams. Nearly every county in Oregon has implemented elder abuse MDT’s, and the numbers of investigations and prosecutions has steadily risen ever since.

During the 2003 legislative session, a new civil remedy law was enacted allowing for physical and financial abuse penalties to be increased three-fold. In addition, sexual assault was added to the Elderly and Disabled Person Abuse Prevention Act, which was originally passed in 1995 (ORS 124.005—040).

Today, the Attorney General’s Task Force on Elder Abuse is chaired by Attorney General Hardy Myers. It continues as the primary statewide body to coordinate policy and related issues regarding elder abuse and neglect. This report will serve as an additional resource to the work done by Attorney General Myers and his group.

Governor Kulongoski’s Elder Abuse Task Force Recommendations

As members of the task force, we understand the great policy and budgetary demands placed on the state especially as Oregon slowly works its way out of a multi-year recession. The task force believes that these recommendations should be viewed as goal posts for the future; some of which can be accomplished soon while others may need to be considered during stronger budgetary times.

The proposed recommendations combine a number of initiatives to shore up protections for elders, give prosecutors and investigators better tools and also better inform the public of the real issues surrounding elder abuse in the community, and how to prevent it. With the demographic bubble heading towards an increasingly aging society we believe it is incumbent upon all public officials to provide leadership on this most pressing family violence crime category.

State Agencies

- The Governor asked the task force to convene a subcommittee during the summer of 2004 to review the current criminal background check system and to see what steps could be taken to improve the safety of seniors and reduce the backlog of criminal background checks to providers. The task force recommends to the Governor that he direct the Department of Human Services (DHS) to work to develop a quick response process to expedite criminal background checks to reduce the current backlog. Currently, the Department of Human Services conducts approximately 17,000 criminal background checks per month which includes checks for long-term care facilities, child care providers, foster care facilities, potential adoptive parents and providers for individuals with mental health and developmental disability clients. The Department of Human Services, Seniors and People with Disabilities (DHS/SPD) should strengthen guidelines so that caregivers who are hired before criminal background checks are finalized will have closer supervision until such checks are completed. It is important that the Department of Human Services reviews its current

rules and procedures regarding client contact by caregivers to assure safety and well-being of vulnerable adults.

- We recommend that the Governor ask DHS/SPD to convene a work group to explore the possibility of and make recommendations on developing a registry of individuals who have committed abuse against vulnerable adults. This registry should contain the names of those individuals who have been, under administrative law, found to have committed abuse or neglect against vulnerable adults. This would help to assure that those individuals who have abused or neglected someone in the past would be unable to find employment either in the state or private caregiving marketplace.
- The task force recommends that the Governor urge the Department of Human Services to create a criminal history registry. This registry would alert care-providers, immediately, if an applicant has already been identified as someone with a criminal record. This system would eliminate the need for duplicate criminal background checks and set up barriers for those that seek employment in other related care providing fields.
- The task force recommends to the Governor that he request DHS/SPD create a list of crimes that potentially disqualify individuals from providing care in an institutional care setting including sex abuse crimes and some theft crimes. This list will be used as part of the fitness determination process for applicants.
- We urge the Governor to have him assign the Department of Corrections (DOC) to develop a system to notify managers of long-term care facilities when a predatory sex offender is placed in that facility. DOC should develop memoranda of understanding among DHS and other relevant agencies or groups to establish a standardized referral process to be used when a predatory sex offender is placed into long-term care.

Multidisciplinary Teams (MDT'S)

- The task force recommends to the Governor that he urge county-based elder abuse MDT's to encourage their county medical examiners to join these MDT's and help facilitate the creation of fatality review panels for suspicious deaths.
- The task force heard testimony that some MDT's do not have agreements that allow the exchange of critical information related to elder abuse cases. The task force recommends to the Governor that he urge all elder abuse MDT's to work towards that end by creating written agreements signed by the relevant government and community agencies.

Victim Assistance

- Recognizing the importance of treating the elder victim with sensitivity and respect, the task force recommends to the Governor that he work with Attorney General

Hardy Myers, and the Department of Justice Crime Victims' Assistance Section, to make services for elderly and disabled crime victims a priority in issuance of discretionary grants where the Department has the authority to do so.

- The majority of reported crimes against elders are financially based. The passage of SB 617 in 2003, at the request of Attorney General Hardy Myers Restitution Reform Task Force, was the first step in moving towards the fulfillment of the constitutional right of victims for "prompt restitution" (Article 1, Sec 42). SB 617 states that courts shall order full restitution when the state presents evidence to support a victim's loss, injury or damages. In addition, it states that the restitution is due and payable at the time of the judgment. This is a change from the previous law which allowed the courts to consider the defendant's ability to pay *before* ordering the restitution. This is a policy shift for the State, in acknowledging that restitution should be ordered based on the loss to the victim, not on a defendant's ability to pay at the time of sentencing. Though the task force did not have any additional suggestions related to this specific issue, it wanted to be on the record supporting these efforts and reiterate the importance of prompt restitution to victims.
- Oregon has modified the authorizing legislation for issuance of certain state-funded grants in order to fund services for victims of property crimes (ORS 147.231). The federal guidelines for Victims of Crime Act grants also support projects that serve victims of property crimes. As resources become available, the task force encourages the state Department of Justice (DOJ) to explore funding services and partnerships that provide additional services to elderly victims of property crimes.

Law enforcement, prosecutor and judicial training

- The task force commends the quality and commitment to statewide multidisciplinary training during the past 10 years. This has been suspended of late due to the state's budget crisis. However, due to the complex nature of elder abuse, this type of training is vital for the safety of our elders. The task force urges the Governor, working with the Attorney General's Task Force on Elder Abuse, to convene: The Department of Public Safety Standards and Training, Oregon District Attorneys Association, Oregon Department of Justice, Oregon Association of Chiefs of Police, the Oregon State Sheriffs Association, Oregon State Police, appropriate representatives of civilian protective services organizations, and public-spirited private sector organizations such as the Oregon Banker's Association to examine ways to sustain a program of specialized training for line officers, prosecutors, investigators, and judges.

Public/private partnerships

- The state has had an exceptional partnership with the Oregon Banker's Association (OBA) to prevent financial exploitation of the elderly through the nationally recognized bank training kit, developed in Oregon. This kit alerts bank employees of

Oregon law allowing immunity to financial institution staff reporting suspected fraud or financial exploitation (ORS 192.555). More work needs to be done to insure that each generation of new bank employees receive this information as bankers are often on the front line to prevent financial abuse of the elderly. The task force recommends that the Governor issue a joint letter with Tom Perrick, President of the OBA, to each bank branch asking managers to continue the training process with this bank kit.

- The Oregon Health Care Association, the Home Care Commission and DHS/SPD are urged to collaborate to develop a caregiver training video on elder abuse and neglect with specific attention to the various types of caregivers (in home vs. in facility for example). The task force heard repeatedly, over many months, that there is inadequate training for caregivers on elder abuse, prompt reporting to law enforcement and insufficient curriculum targeted to prevention techniques related to abuse and neglect. A curriculum for caregivers as well as managers of care facilities is vital in making sure elders receive appropriate care.
- The task force recommends to the Governor that he urge DHS/SPD to develop a list of qualified experts, working with the Oregon Medical Association and the Oregon Nurses Association, who can serve as expert witnesses in elder abuse cases for district attorney's offices.
- The task force recommends to the Governor that he urge the Oregon Health and Science University (OHSU) to convene a broad-based panel of experts to bring consensus to the issue of decubitus ulcer (bed sores) identification and classification. Doctors often disagree on the length of time these by-products of abuse and neglect take to develop. These recommendations could help in the successful prosecution of criminal abuse or neglect cases.
- Encourage Portland State University, OHSU, Oregon State University Geriatric Education Center, the Oregon State Bar and community groups like AARP Foundation's Legal Counsel for the Elderly, to develop standardized information to educate guardians and conservators. Part of these discussions should also look at the possibility of developing statewide standards. The issue of insufficient training for guardians and conservators and the issues of oversight was discussed during the financial exploitation meeting of the task force
- Encourage the state-wide expansion of community-based volunteer programs like AARP's Money Management Program to help protect lower income vulnerable adults in paying their bills

Public Awareness Campaigns

- The task force urges appropriate parties to undertake a public awareness campaign to help educate Oregonians about elder abuse. As part of this effort, we recommend that

the state annualize a Vulnerable Adult Justice Day, to highlight the unspoken voices of those seniors and people with disabilities harmed by abuse and neglect.

- The task force urges all elder abuse MDTs to construct outreach programs, in coordination with local elder service providers such as senior centers, postal carriers, newspaper delivery people, meals on wheels drivers and other individuals who come into contact with isolated seniors. Outreach suggestions could include inviting representatives of these organizations to MDT meetings, working with members of their local press corps, developing public service announcements, and finding local schools to “adopt” this issue to help educate the community at-large.

The Oregon Elder Justice Act of 2005: A Legislative Proposal

The task force has several ideas for statutory change that could include the following areas:

1. Providing additional protection for elders who have been the victim of financial exploitation, theft, or physical abuse.
2. Assist in the prosecution of sexual abuse against the elderly by including sex abuse as part of the statutory definition of elder abuse.
3. Enhance the mandatory reporting law to better protect vulnerable elders.

These legislative concepts could be consolidated into an omnibus bill captioned “The Oregon Elder Justice Act of 2005.” We believe there are opportunities for better protection of the elderly through this type of measure by providing additional tools to law enforcement and prosecutors. This comprehensive elder crimes initiative would be a significant step to better protect elder victims and hold perpetrators accountable for their actions.

Message to the Governor

The members of the Governor’s Elder Abuse Task Force appreciate the opportunity to contribute to the discussion on this important social problem. We thank Governor Ted Kulongoski for his leadership on this issue over the past 10 years and encourage all policy makers to join in this effort to better protect Oregon’s elderly community.