

ELDER ABUSE

POLICY & PROCEDURE NO. 1.17	ISSUE DATE 04/01/2014
	EFFECTIVE DATE: 04/01/2014
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: none	REVISION
	DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

According to the 2000 census, approximately one of every six Massachusetts residents is age 60 or older. Elders are often the victims of abuse, neglect and financial exploitation. In addition, certain elders have lost the ability for self-care and are unable to meet their essential needs. These self-neglecting elders, along with elder victims and elder perpetrators, present unique challenges for law enforcement.

II. POLICY

It is the policy of this department that:

- A. Officers shall accord all persons, including elders, all the individual rights to which they are entitled;
- B. Officers shall attempt to protect elders from harm and shall refer them to agencies or persons able to provide services where appropriate;
- C. Officers shall coordinate their efforts with local protective services agencies to ensure the elders' safety;
- D. Officers shall adhere to the mandated reporting requirements of G.L.c.19A, §15, the Elder Abuse Reporting Statute, and its implementing regulations found at 651 CMR 5.02; and

III. DEFINITIONS

- A. *Elderly Person*: An Elderly Person is an individual who is sixty years of age or over.

IV. PROCEDURE

A. Generally

1. COMPETENCY

- a. Competent elders have the same right to self-determination as do other adults.
- b. Officers should not make assumptions about the elder's capabilities, but should be aware of the potential for diminished capacity and other complicating factors.

2. ELDER VICTIMS FILING REPORTS

- a. An elder victim may not be competent to tell his/her story.
- b. An elder victim may be reluctant to report an abusive family member or caretaker who acts as the victim's sole or primary support.
- c. An elder victim may be too embarrassed to admit that a loved one is abusing him/her.

3. ELDER PERPETRATOR

- a. An elder perpetrator may also have diminished capacity and poor impulse control caused by a disease process.
- b. The department's Domestic Violence Policy and Procedures apply to elders.

4. CARETAKER STRESS

- a. Adult children who have family, career and other obligations of their own may also be responsible for taking care of their parents.
- b. The associated stress can occasionally lead to neglect and more dangerous behaviors.

B. The Mandated Reporting Law

1. GENERALLY

- a. Officers shall familiarize themselves with the following terms, as defined in the reporting law and implementing regulations.
- b. The failure to report suspected instances of abuse or neglect is punishable by a fine of up to \$1,000. ¹
- c. For a mandated reporter, the law grants immunity from civil and criminal liability based on the filing of a report, so long as the reporter did not inflict the abuse.

2. DEFINITIONS²

- a. ABUSE: An act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person or the failure of an elder to meet one or more of his/her essential needs. The statute provides an exception for treatment provided or refused in accordance with religious beliefs. "Abuse" includes physical, emotional and sexual abuse, caretaker neglect, self-neglect, and financial exploitation. G.L. c.19A, §14
- b. EMOTIONAL ABUSE: The non-accidental infliction of serious emotional injury to an elder. There must be an established relationship between the emotional abuse and its effect on the elder. 651 CMR 5.02
- c. FINANCIAL EXPLOITATION: An act or omission by another person, which causes a substantial monetary or property loss to the elder, or causes a substantial monetary or property gain to the other person which would otherwise benefit the elder. Exploitation may result even if the elderly person consented to the act or omission if the consent was obtained through misrepresentation, undue influence, coercion or the threat of force. G.L. c.19A, §14.
- d. NEGLECT: The failure or refusal by a caretaker to provide one or more of the necessities essential for physical well-being which has resulted in or may immediately result in serious physical harm. 651 CMR 5.02
- e. PHYSICAL ABUSE: The non-accidental infliction of, or threat of, serious physical injury to an elder. 651 CMR 5.02
- f. SELF-NEGLECT: The failure or refusal of an elder to provide for himself or herself one or more of the necessities essential for physical and emotional well-being, including food, clothing, shelter, or personal care, which has resulted in, or where there is a substantial reason to believe that such failure or refusal will immediately result in, serious harm and prevents the elder from remaining safely in the community. 651 CMR 5.02(6) (2004)
- g. SEXUAL ABUSE: Sexual assault, rape, sexual misuse, sexual exploitation of an elder, or threats of sexual abuse. 651 CMR 5.02

3. REPORTING

- a. Police are required, as mandatory reporters, to report suspected instances of elder abuse.³
 - 1) This occurs if there is reasonable cause to believe that an elder, who is 60 years of age or older, is suffering from or has died from abuse or a reportable condition.

- 2) A police officer must immediately make a verbal report to the Department of Elder Affairs or the local protective services agency during normal business hours or to the elder abuse hotline (1-800-922-2275) after normal business hours and on weekends.
- b. A written report must be filed within 48 hours of the verbal report.
- c. Mandated reporters are informed in writing of the disposition of reports.

C. Special Circumstances

1. PHYSICAL LIMITATIONS

- a. Many elders, whether self-neglecting, abuse victims or perpetrators, have physical limitations that make it difficult for them to communicate.
- b. Some elders have speech impairments caused by stroke or other debilitating conditions.
- c. Others suffer from a loss of hearing or vision or other frailties that may impair their ability to communicate.
- d. Officers must be aware of and sensitive to the physical limitations of individual elders and make efforts to communicate with them in a sensitive and respectful manner.
- e. When needed, assistance from the appropriate protective services agency should be sought.

2. DIMINISHED CAPACITY

- a. Some elders have diminished cognitive capacity due to the effects of dementia or Alzheimer's disease.
- b. Depending on the extent of the dementia or Alzheimer's, an elder may or may not be able to provide reliable information about his/her situation.
- c. Some elders suffer from mental illness, which could further impact their cognitive abilities.
- d. Police officers need to be able to identify when an elder's diminished capacity prevents him/her from providing reliable information and obtain assistance from the appropriate protective services agency.

3. WORKING WITH RESISTANCE

- a. Many elders are resistant to outside intervention.
- b. This resistance may be due to any number of factors, including:
 - 1) A life-long sense of independence;

- 2) The effects of mental illness;
 - 3) Fear or embarrassment to admit that they have been abused; and/or
 - 4) Desire to protect the perpetrator.
- c. When encountering resistance, it is important to build rapport by determining and responding to those issues that are important to the elder. Often, this approach will diminish the resistance and enable the officer to address more serious matters.
 - d. When needed, assistance should be sought from the protective services agency.

D. Taking an Elder into Custody

1. CRIMINAL: An elderly person may be taken into custody if the elder has committed a crime.
2. NON-CRIMINAL
 - a. An elderly person may be taken into custody for emergency mental health if: ⁴
 - 1) The officer has reason to believe that the failure to hospitalize the elder would create a likelihood of serious harm by reason of mental illness; or
 - 2) The elder has escaped or eluded the custody of those lawfully required to care for him/her.
3. If the situation warrants, an officer should consider whether the procedures outlined in the Civil Commitment Statute would be appropriate and refer to the department's policy on ***Handling the Mentally Ill***.

E. Interrogating Elderly Suspects

1. CRIMINAL INTERROGATION
 - a. Whenever an elderly person is suspected of committing a crime and is going to be questioned, police officers must be particularly careful in advising the subject of his/her Miranda rights and eliciting any decision as to whether he or she will exercise or waive those rights.
 - b. It may not be obvious that the person does not understand his/her rights.
 - c. The department's Interrogating Suspects and Arrestees policy and procedure should be consulted.

2. MENTAL CONDITION OR DISABILITY

- a. Before interrogating a suspect who has a known or apparent mental condition or disability, police should attempt to determine:
 - 1) The nature and severity of that condition or disability;
 - 2) The extent to which it impairs the subject's capacity to understand basic rights and legal concepts, such as the Miranda warnings; and
 - 3) Whether there is an appropriate "interested adult," such as a spouse, adult child, guardian or legal custodian of the elder who could assist the elder in understanding his or her Miranda rights and in deciding whether or not to waive any of those rights in a knowing, intelligent and voluntary manner.
- b. Where competency may be in question, officers should be aware that any waiver obtained will be carefully scrutinized by the court.
- c. Consultation with the local district attorney's office may be appropriate in such circumstances.

F. Considerations When Arresting a Caretaker

1. In cases involving abuse of an elder by a caretaker, officers must address the issue of whether or not the victim can be left alone safely if the abuser is arrested.
2. If the elder cannot be left alone, the appropriate protective services agency must be contacted in order to arrange for the temporary care of the elder.

G. Selected Criminal Laws: *Following are several of the criminal statutes which officers dealing with the elder population may encounter with some frequency:*

1. Assault and Battery upon an Elderly or Disabled Person (G.L. c.265, §13K);
2. Indecent Assault and Battery on a Person 14 or Older (G.L. c.265, §13H);
3. Assault and Battery with Dangerous Weapon; Victim Sixty or Older (G.L. c.265, §15A);
4. Assault with Intent to Rob or Murder While Armed; Victim Sixty Years or Older; Minimum Sentence for Repeat Offenders (G.L. c.265, §18);
5. Robbery by Unarmed Person; Victim Sixty or Older (G.L. c.265, §19);

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6. Entering Dwelling House by False Pretenses; Intent to Commit Felony; Larceny (G.L. c.266, §18A);
 7. Larceny by Stealing; Victim Sixty-Five or Older (G.L. c.266, §25); and
 8. Larceny; General Provisions and Penalties (G.L. c.266, §30(5)).

¹ M.G.L.c.19A, §15.

² M.G.L.c.19A, §14; 651 CMR 5.02.

³ See M.G.L. c. 19A, §15. Officers are mandated to report abuse and neglect of elders in nursing homes and other long-term care facilities to the Department of Public Health; M.G.L. c. 111, §72G; M.G.L.c.19A, §15; 651 CMR 5.02.

⁴ M.G.L. c.123, §12(a).