

GENERAL ORDER 1.3.5

Domestic Violence / Child Abuse / Elder Abuse

GENERAL ORDER CROSS-REFERENCE: 1.3.1, 45.2.2, 55.1.1, 41.3.1

SUMMARY

Establishes procedures for initiating investigations of child abuse, elder abuse and domestic violence and mandatory reporting or physical arrests in specific circumstances.

DISCUSSION

During the normal course of duty, Springfield police officers are confronted with circumstances involving domestic violence, including the abuse of children, spouses, adult domestic partners of opposite sex and the elderly. Statutory law mandates certain activities of police in many of these circumstances. This procedure provides a guideline for appropriate investigation, enforcement and reporting of these incidents.

POLICY

I

DEFINITIONS

Probable Cause:

ORS 131.005(11) states: Probable cause means that there is 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. Under the definition of ORS 133.310, police officer may make an arrest without a warrant when there is probable cause to believe a person has committed a felony or a class A misdemeanor or an unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class C misdemeanor. Probable cause under the Oregon Constitution has both a subjective and objective component. An officer must subjectively believe that a crime has been committed and thus that a person or thing is subject to seizure and this belief must be objectively reasonable under the circumstances.

Abuse of a child means:

- (a) Any assault, as defined in Chapter 163 of the Oregon Revised Statutes, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.
- (b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.
- (c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are defined in ORS Chapter 163.
- (d) Sexual abuse as defined in ORS Chapter 163.
- (e) Sexual exploitation, including but not limited to:
 - (A) Contributing to the sexual delinquency of a minor, as defined in ORS Chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact as defined in ORS 167.002 or described in ORS 163.665 and 163.670, as sexual abuse involving a child or rape of a child.
 - (B) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS Chapter 167.
- (f) Negligent treatment or maltreatment of a child including but not limited to the failure to provide adequate food, clothing, shelter or medical care. However, any child who is under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or the child's parent or guardian shall not, for this reason alone, be considered a neglected or maltreated child.
- (g) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

Child means: An unmarried person who is under 18 years of age.

Elder person means: Any person 65 years of age or older.

Elder abuse means:

- (a) Any physical injury caused by other than accidental means or by which appears at variance with given explanation; or

- (b) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being; or
- (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a care giver or other person; or
- (d) Willful infliction of physical pain or injury; or
- (e) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments of such a nature as to threaten significant physical or emotional harm to the elderly person.
- (f) Causing any sweepstakes promotion to be mailed to an elderly person or a person with a disability who had received sweepstakes promotional material in the United States mail, spent more than \$500 in the preceding year on any sweepstakes promotions, or any combination of sweepstakes promotions from the same service, regardless of the identities of the originators of the sweepstakes promotion and who represented to the court that the person felt the need for the court's assistance to prevent the person from incurring further expense.
- (g) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with a disability to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with a disability to believe that the threat will be carried out.
- (h) Sexual contact with a nonconsenting elderly person or person with a disability or with an elderly person or person with a disability considered incapable of consenting to a sexual act as described in ORS 163.315 (Incapacity to consent). As used in this paragraph, "sexual contact" has the meaning given that term in ORS 163.305 (Definitions).

Domestic Abuse means:

The occurrence of one or more of the following acts between family or household members:

- (a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.
- (b) Intentionally, knowingly or recklessly placing another in fear of imminent serious bodily injury.
- (c) Causing another to engage in involuntary sexual relations by force or threat of force.

Domestic relationship means: Spouses, former spouses or adult persons related by blood or marriage, or persons of opposite sex residing together or who formerly resided together, persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under ORS 107.710, unmarried parents of a child.

II

CHILD ABUSE

When a report of child abuse is received by members of the police department, the police shall conduct an investigation as soon as reasonably possible. A report shall be made of such investigation and forwarded to the local office of the Department of Services for Children and Families. The report shall be prepared and submitted to the Department of Health & Human Services regardless of any determination by the investigating officer as to whether the report is founded or unfounded.

If a member of the department conducts an investigation and finds reasonable cause to believe that abuse has occurred, the local office of the Department of Health & Human Services shall immediately be notified orally and informed of the abusive circumstances. Notification is satisfied by faxing a copy of the reported abuse to the Department of Health & Human Services when staff is unavailable. Reasonable cause means the officer holds a belief that is reasonable under the totality of the circumstances existing at that time and place. The officer must be able to point to specific and articulable facts. The phone report shall be followed up with a written report. The Department of Health & Human Services provides protective services of its own or of other available social agencies if necessary to prevent further abuses to the child or to safeguard the child's welfare.

Officers responding to an investigation of reported child abuse shall determine the nature of the reported abuse and examine or cause the child to be examined for injury and evidence of abuse. ORS 419B.028 authorizes any law enforcement agency to photograph any child subject of the investigation for purposes of preserving evidence of the child's condition at the time of the investigation. Children ages six years and younger may be examined by the officer conducting the investigation. Children older than six years of age may be examined with the consent of a responsible guardian or taken to a medical facility for examination by medical personnel. Adolescent children shall be examined by an officer of the same gender or taken to a medical facility for examination by medical personnel. A child 12 years of age or older may refuse to consent to a physical examination to confirm sexual abuse.

Officers responding to an investigation of reported child abuse shall not conclude an investigation until such time as a reasonable effort is made to examine the children in this investigation. If reasonable suspicion exists that child abuse has occurred and it is necessary to enter a residence to examine the child, officers shall do so with or without consent of the person responsible for the residence. If officers are refused entrance to a residence for the purpose of examining the welfare of a child, a supervisor shall be called to provide assistance. In the event

that no reasonable suspicion exists to enter on behalf of a child and the person refuses to permit law enforcement officers entrance to the premises an/or to examine the potential child abuse victim, a police legal advisor shall be notified immediately to obtain direction on the next course of action.

The presence of other children in a residence where there is suspected or reported child abuse is cause for the officer to ensure that those children are also examined for injury or abuse.

When an investigation into a reported child abuse produces information to support the allegation, the investigating officer shall:

When the abuse is serious in nature and requires immediate follow-up, notify the Investigations Sergeant;

Verbally notify the Department of Health & Human Services immediately.

Photograph and seize items of evidence relating to the case.

Photograph and document injuries sustained by the victim.

Ensure that the child is removed from the unsafe environment and placed in shelter care, a medical facility or with other family members as agreed upon with the Department of Health & Human Services.

Make appropriate documentation of the investigation.

III

ELDER ABUSE

When a report of elder abuse is received by members of the police department, an investigative report shall be made to the local office of the Senior and Disabled Services Division. The report shall be prepared and submitted to the Senior and Disabled Services Division regardless of any determination as to whether the report is founded or unfounded. The police department shall assist the Senior and Disabled Services Division in the investigation of elder abuse including gaining access to the allegedly abused elderly person.

When the police department receives a report of elder abuse that is or has occurred outside of the jurisdiction of the Springfield Police Department, the law enforcement agency having jurisdiction shall be notified and the local office of the Senior and Disabled Services Division in the county where the report is made is immediately notified. If staff is unavailable, a copy of the reported elder abuse may be faxed to comply with the notification requirement.

When the department receives a report of elder abuse, an investigation shall be initiated promptly to determine the nature and cause of the abuse. If the investigating officer finds reasonable suspicion to believe that abuse has occurred, the officer shall notify the local Senior and Disabled Services Division. The investigation shall include a visit to the named elderly

person and consultation with those individuals having knowledge of the facts of the particular case. Upon completion of the investigation, a written report shall be submitted including any action taken by members of the police department, written recommended further action, and a determination of whether protective services are needed. Officers shall ensure that a safety plan is in place for the elderly victim(s).

When conducting an investigation of elder abuse, that law enforcement officer or the Senior and Disabled Services Division may photograph or cause to have photographed any victim who is the subject of the investigation for purposes of preserving evidence of the condition of the victim at the time of the investigation.

The investigating officer having reasonable suspicion to believe that elder abuse has occurred within the preceding 180 days and that the elderly person is in immediate and present danger of further abuse from the abuser shall inform the elderly person who has been the victim of abuse of the person ' s right to obtain a restraining order in circuit court.

IV

DOMESTIC VIOLENCE

Pursuant to ORS 133.055, Springfield police officers, when at the scene of a domestic disturbance and having probable cause to believe that an assault has occurred between spouses, former spouses or adult persons related by blood or marriage or persons of opposite sex residing together or who formerly resided together, or that one such person has placed the other in fear of imminent serious physical injury, shall arrest and take into physical custody the alleged assailant or potential assailant.

Whenever a Springfield police officer has reason to believe that a family or household member has been abused, the officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of shelter or other services in the community and giving each person immediate notice of their legal rights and remedies available. This information is contained in the pamphlet "If You Are a Victim of Domestic Violence" provided by the Lane County District Attorney. The officer shall also provide information for shelters or other resources available to the victim. The officer shall make a reasonable effort to examine children in the residence for evidence of abuse.

The victim shall be notified to contact the Lane County District Attorney ' s Office as per information contained in the pamphlet noted above.

Richard L. Lewis
Chief of Police