

Rules and Procedures

Rule 327B

June 12, 2006

Rule 327B - PROTECTION OF ABUSED ELDERS, PERSONS WITH DISABILITIES, AND PATIENTS

This Rule is issued to establish Department policy and procedures and ensure compliance with existing statutes and regulations when responding to incidents of elderly abuse, abuse of persons with disabilities, and abuse of patients.

Sec. 1 Definitions: For the purposes of this Rule the following definitions as specified in M.G.L Chapters 19A s. 14, 19C s. 1, 111, s. 1 and 123, s. 1 and Code of Massachusetts Regulations (651 CMR 5.02), will apply:

Elderly Person: Any person aged 60 years or older.

Elderly Abuse: An act or omission which results in serious physical or emotional injury to an elderly person, 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.

Physical Abuse: The infliction of, or threat of, serious physical injury to an elder.

Sexual Abuse: Sexual assault, rape, sexual misuse, sexual exploitation, or threats of sexual abuse.

Emotional Abuse: The non-accidental infliction of serious emotional injury. There must be an established relationship between the emotional abuse and its effect on the elder.

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.

Self-Neglect: The failure or refusal of an elder, disabled person, or patient 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, disabled person, or elder from remaining safely in the community.

Financial Exploitation: An act or omission by another person which causes a substantial monetary or property loss of an abused person or causes a substantial monetary or property gain to the other person which would otherwise benefit the abused person. Exploitation may

result even if the abused person consented to the act, or omission if the consent was obtained through misrepresentation, undue influence, coercion or the threat of force.

Disabled Person: A person between the ages of 18 to 59, inclusive, who is mentally retarded, or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his daily living needs.

Abuse of a Disabled Person: An act or omission that results in serious physical or emotional injury. The statute provides an exception for treatment provided or refused in accordance with religious beliefs.

Reportable Condition: A serious physical or emotional injury resulting from abuse, including sexual activity without consent, and/or financial exploitation.

Caretaker: A disabled person's parent, guardian or other person or agency responsible for a disabled person's health or welfare, whether in the same home as the disabled person, a relative's home, a foster home or any other day or residential setting.

Patient Abuse: The willful infliction of injury, unreasonable confinement, intimidation, including verbal or mental abuse, or punishment with resulting physical harm, pain or mental anguish or assault and battery; provided, however, that verbal or mental abuse shall require a knowing and willful act directed at a specific person.

Facility: An entity licensed under M.G.L. c. 111, § 71.

Home Health Aide: An employee of a home health agency or a hospice program who provides health services to individuals in a home setting.

Home Health Agency: An entity, however organized, whether conducted for profit or not for profit, which is advertised, announced, established or maintained for the purpose of providing health and homemaker services to individuals in a home setting.

Homemaker: An employee hired by a home health agency or a hospice program to perform homemaking tasks in an individual's home, including the essential nutritional and environmental needs of the individual, such as, meal preparation, cleaning and laundry.

Hospice Program: An entity licensed under M.G.L. c. 111, § 57D or a hospice service of a hospital licensed under M.G.L. c. 111, § 51.

Misappropriation of patient or resident property: The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a patient's or resident's belongings or money without such patient's or resident's consent.

Mistreatment: The use of medications or treatments, isolation, or physical or chemical restraints that harm or are likely to harm the patient or resident.

Neglect of Patient: Failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

Nurse Aide: An individual who is not a licensed health professional but is employed by a facility that provides nursing or nursing-related services to residents.

Patient: An individual who receives health, homemaker or hospice services at home from an individual employed by a home health agency or a hospice program.

Religious Accommodation: No person shall be considered to be abused or neglected for the reason that such person, in accordance with his express or implied consent, is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with a religious method of healing in lieu of medical treatment.

Resident: An individual who resides in a long-term care facility licensed under M.G.L. c. 111, § 71.

Sec. 2 General Considerations: Various statutes afford elders, persons with disabilities, and patients with specific protective measures. Officers must familiarize themselves with these statutes to protect these persons from physical, sexual, and emotional abuse, financial exploitation, neglect, and mistreatment and identify offenders who violate these statutes. When provisions of this rule are found to be incomplete or inapplicable to a particular set of circumstances, officers are expected to act intelligently and exercise sound judgment, attending to the spirit above the letter of the law.

Sec. 3 Elder Abuse: M.G.L. c. 19A, § 15(a) mandates that an officer who has reasonable cause to believe that an elder is suffering from or has died as a result of abuse, shall immediately make a verbal report of such information to the Department of Elder Affairs/Ethos, and within 48 hours make a written report to the department or its designated agency. Officers shall mail or fax the "Elder Abuse Mandated Reporter" BPD Form 19A to Ethos. Additionally, officers must complete and mail or fax a Boston Police Incident Report Form 1.1. Failure to report suspected instances of abuse or neglect is punishable by a fine of up to \$1000. A mandated reporter is granted immunity from civil and criminal liability based on the filing of a report, so long as the reporter did not inflict the abuse. Mandated reporters are informed in writing of the disposition of reports.

Sec. 4 Abuse of Persons With Disabilities: M.G.L. c. 19C has afforded specific protection for persons with disabilities between the ages of 18 to 59, inclusive, who are mentally retarded or who are mentally or physically disabled and as a result of such mental or physical disability are wholly or partially dependent on others to meet daily living needs. If an officer in his professional capacity has reasonable cause to believe that a person with a disability is suffering a serious physical or emotional injury, resulting from abuse, including non-consensual sexual activity, the officer shall immediately make a verbal report to the Disabled Persons Protection Commission, (DPPC) and shall report in writing to the DPPC within 48 hours after such verbal report. Officers shall mail or fax the "Disabled Abuse Mandated Reporter Form 19C to DPPC. Additionally, officers must complete and mail or fax a Boston Police Incident Report Form 1.1.

M.G.L c. 19C also provides for a fine up to \$1000.00 for failure to report suspected instances of abuse. A mandated reporter is granted immunity from civil and criminal liability based on the filing of a report, so long as the reporter did not inflict the abuse. Mandated reporters are informed in writing of the disposition of reports.

Sec. 5 Abuse of Patients: M.G.L. c. 111, s. 77g protects patients within hospitals, nursing homes, rest homes, home health agencies, and hospice programs. Officers must make an oral report and submit a written report (BPD Form 0111) within 48 hours of the oral report to the Department of Public Health when notified of abuse, mistreatment, or neglect or misappropriation of patient or resident property. Failure to report suspected instances of abuse or neglect is punishable by a fine of up to \$1000. A mandated reporter is granted immunity from civil and criminal liability based on the filing of a report, if such report was made in good faith. Mandated reporters can request to be informed in writing of the disposition of reports.

Sec. 6 Police Incident Reports: In addition to mandated reports, officers must complete a police incident report in all cases involving the abuse of elders, persons with disabilities, and/or patients. Officers must also complete an incident report when called to check on the welfare of such persons or to assist in a call that requires emergency medical services response. If the abuse is not within departmental jurisdiction, officers shall document their actions on an incident report and notify the appropriate jurisdiction. A miscel for a call is only justified in cases where the officer determines that the incident is not bona fide, or no such victim or address exists.

Sec. 7 Duties of Responding Officers: Officers shall take the following steps when confronted with Incidents of Elder, Persons with Disabilities, and Patient Abuse:

A. Provide protection and documentation and request a supervisor.

B. In cases of sexual abuse, promptly contact a SAU Detective.

C. Request Emergency Medical Services and notify the appropriate protective service agency when there is reasonable cause to believe the elder, disabled person, or patient is living in conditions which present substantial risk of (1) death, or (2) immediate or serious physical or mental harm or substantial and irrevocable financial loss.

D. Assist in obtaining medical treatment, transport, or arrange transportation to a health care facility.

E. Assess and provide for the safety needs and care of children present at the scene.

F. Arrange for temporary care of dependent children if the victim is immediately transported to a medical facility.

G. Remain on the scene as long as physical danger exists.

H. Arrest any person who the officer observes or has probable cause to believe has committed a felony of bodily harm and/or domestic violence.

I. Notify the on-call prosecutor of physical abuse and homicide cases in which a victim is admitted to a hospital or dies as a result of suspected abuse.

J. Immediately make a verbal report, and within 48 hours submit a written report (BPD Form 19A, 19C, or BPD Form 0111) along with the police incident report, to the appropriate agency.

K. Provide the victim with a card listing Protective Service Agencies.

L. In cases of patient abuse, submit a written report (BPD Form 0111) and a copy of the police incident report to the Department of Public Health (DPH), Division of Health Care Quality.

Sec. 8 Patrol Supervisor's Responsibilities:

A. Call the relevant protective service agency to the scene, if necessary.

B. Ensure notification of the on-call prosecutor in cases of physical abuse and homicide.

C. Ensure the proper documentation of all calls and appropriate use of miscels.

Sec. 9 Duty Supervisor's Responsibilities:

A. Ensure selection of “Elderly” or “Disabled” under key situations on the incident report.

B. Ensure the completion and submission of mandated verbal and written reports to the appropriate protective service agency.

C. Ensure that the 1.1 includes the fact that the mandated report was made, when applicable.

D. Forward incident reports and mandated reports that involve Domestic Violence to the Family Justice Center.

E. Forward incident reports and mandated reports that involve sexual assaults to the Sexual Assault Unit.

Sec. 10 Detective’s Responsibilities:

A. Conduct a search of the available department and law enforcement databases for incidents involving the victim or suspect, reported elder, disabled person, or patient and/or his/her family. Special attention should be given to any previously reported history of domestic violence and/or abuse, neglect, self-neglect, and/or financial exploitation.

B. Keep a copy of the 19A, 19C and 111 forms in a permanent file.

C. Contact the appropriate protective services agency to determine the service worker assigned for investigative coordination. Confer with the Assistant District Attorney’s Elder and Persons with Disabilities Unit (See Section 12 for contact number and address) for legal clarification.

D. If the suspect is known, arrest for bodily harm felonies and domestic violence. Seek criminal complaints if probable cause exists for financial exploitation and/or misdemeanors.

Sec. 11 Duties of Community Service Officers: Investigators and service agencies may request a Community Service Officer (CSO) to visit or interview elders, persons with disabilities, and patients to obtain information regarding abuse, neglect, or financial exploitation. The CSO shall complete a police report in all situations and if the CSO determines that a crime has occurred, he/she shall forward a copy to the appropriate District Detective and/or Specialized Unit. The CSO will also notify the appropriate service agency verbally and, within 48 hours, in writing (BPD Form 19A, 19C, 111, and a copy of the police incident report).

Sec. 12 Protective Service Agencies/District Attorney's Elder and Persons with Disabilities Unit:

- Department of Elder Affairs c/o Ethos, 555 Amory Street, Jamaica Plain, MA 02130-2672, 617-522-6700, fax 617-524-2899 and after hours hotline 800-922-2275.
- Disabled Persons Protection Commission, 50 Ross Way, Quincy, MA 02169. Hotline - 800-426-9009, Fax - 857-403-0296. To ascertain the Civil Investigator assigned call 617-727-6465. Ask to speak to a Massachusetts State Police officer for hotline report clarification, questions, and warrant assistance.
- Department of Public Health, Division of Health Care Quality, Complaint Unit, 99 Chauncy Street, 2nd floor, Boston, MA 02111, 617-753-8000, or the emergency on call line (after hours 617-363-0755). Officers can fax reports to the Intake Surveyor at 617-753-8165.
- Massachusetts Department of Mental Retardation (DMR), The Fernald Center, 200 Trapelo Road, Withington Building (Tufts Dental Center, 2nd Floor), Investigations Unit, Waltham, MA 02452, 781-894-3600, fax 781-314-7543. Ask for DMR Investigations (for those victims who are served by DMR) to find out the Civil Investigator assigned as Criminal Liaison for the investigation.
- Massachusetts Department of Mental Health (DMH) Investigations Manager 617-626-8108, Metro Boston Area Office, Office of Investigations, 25 Staniford St., Boston, MA 02114, 617-626-8108, fax 617-626-8156 (for those victims who are served by DMH) to find out who Civil Investigator assigned the investigation.
- Massachusetts Rehabilitation Commission (MRC) Call the Director of Protective Services 508-823-2874, fax 508-823-5186, 21 Spring Street, 2nd Floor, Taunton, MA 02780, to find out Civil Investigator assigned the investigation.
- Assistant District Attorney's Elder and Persons with Disabilities Unit 617-619-4000, 617-619-4275, 617-619-4262 Suffolk County District Attorney's Office, 1 Bulfinch Place, Boston, MA 02114

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