

SafetyNetWorks

*Information for Elder-Adult-at-Risk and Adult-at-Risk Agencies
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IN THIS ISSUE

The Approach of County Elder Adults/Adults-at-Risk (EA/AAR) Agencies in Responding to Abuse, Neglect and Financial Exploitation: The Social Work Philosophy/Model

SUMMARY

Changes in Wisconsin statutes at the end of 2006, in part to strengthen law enforcement's involvement in addressing victim safety and holding abusers accountable, have caused County EA/AAR staff to wonder whether their role has changed from a person-centered approach (social work philosophy) to more of an investigator role (law enforcement philosophy).

Under the social work philosophy, efforts are focused on providing needed supports that will empower and protect the elder adult/adult at risk. The law enforcement philosophy is also based on protecting the community but efforts are focused on finding and punishing the criminal in order to restore security.

The focus of EA/AAR workers was, is and will continue to be the protection of the adult at risk through advocacy, support and service recommendations.

BACKGROUND

In Wisconsin and nationally, Adult Protective Services laws, as created in the 1970's, were written based on the assumption that abuse was generally perpetrated by loving caregivers as a result of stress or lack of knowledge. Even Wisconsin's Elder Abuse law, passed in 1985, was based on that assumption of "caregiver stress," not criminal behavior and did not include clear direction on engaging the criminal justice system.

Current research has established that a significant percentage of cases of abuse and neglect of elder adults/adults at risk arises not from "caregiver stress" but from the same types of family violence and power/control dynamics as exist in domestic violence situations. Control, greed and opportunity are significant factors in abuse, neglect and financial exploitation.

As a result of these findings, Wisconsin EA/AAR law now more clearly defines the role of law enforcement and the criminal justice system in identifying and protecting elder adults/adults at risk. That said, the law still reflects the traditional social work model of meeting the needs and wishes of the elder adult/adult at risk. EA/AAR workers encourage individuals to make their own decisions and those decisions take precedence over the views of the family and others. Interventions should ensure safety and ongoing protection while infringing as little as possible on the self-determination of the elder adult/adult at risk.

INVESTIGATORS VS. RESPONDERS

Changes to Wisconsin State Statutes 46.90 and Chapter 55 do not direct the EA/AAR worker to shift from **responding** to the needs of the AAR to **investigating** reports in order to prosecute an abuser. Instead, the new laws provide EA/AAR agencies with additional tools to stop abuse and at the same time better delineate the roles of both county EA/AAR staff and law enforcement.

COLLABORATION WITH LAW ENFORCEMENT

Defining these roles allows EA/AAR workers to maintain the traditional social worker role in advocating for and supporting the best interests of the adult at risk while, at the same time, promoting collaboration with law enforcement for their expertise in investigating and prosecuting abusers.¹

Although many counties already have strong partnerships with the county sheriff and local police departments, statutory changes “formalize” the relationship between EA/AAR agencies and law enforcement by:

- Requiring the development of a policy for notifying law enforcement in appropriate cases;
- Requiring notification of law enforcement if the EA/AAR worker has reason to believe that substantial physical harm, irreparable injury, or death may occur to an elder adult/adult at risk;
- Requiring law enforcement to accompany an EA/AAR worker on a visit to an elder adult/adult-at-risk’s residence if the worker requests their presence or assistance;
- Encouraging referral to law enforcement if, upon responding to a report of abuse, the EA/AAR worker has reason to believe that a crime has been committed.

ADDITIONAL TOOLS

The new laws provide EA/AAR workers with additional tools including the ability to:

- Respond to reports of abuse, neglect and financial exploitation of ALL adults at risk (age 18 and older);
- Interview elder adults/adults at risk with or without the consent of any court-appointed guardian or any agent under an activated power of attorney;
- Transport the elder adult/adult at risk for medical examination;
- Review medical and financial records without consent.

Many of these new tools recognize the change in understanding that abuse, neglect and exploitation of an elder adult/adult at risk are often crimes, not just “caregiver stress.”

¹ See **Appendix A** for more information about when to include law enforcement in your response and when it may be better to respond to the report without the involvement of law enforcement.

However, these are only tools. EA/AAR staff still retain their role as social workers. Based on their review of the situation and discussions with the elder adult/adult at risk, workers use their best judgment on what is best for the elder adult/adult at risk, including taking no further action.

Two other changes to Wisconsin statutes strengthen the abilities of EA/AAR workers to stop abuse, neglect and exploitation of elder adults/adults at risk:

1. “Refusal” Language²

Prior to enactment of the EA/AAR and Adult Protective Services (APS) Modernization Act, Wisconsin statutes included a section limiting the role of EA/AAR workers when an individual at risk refused an investigation. Even when potential actions posed a serious and imminent risk to an individual, investigation was restricted. In amending the law, the “refusal” language was struck from the statute. This was to allow EA/AAR staff to respond, based on their judgment of the risk, even if the individual at risk expressed reluctance to proceed during their first encounter.

The elimination of this section does not change the core social work philosophy of enhancing the capacity of people to address their own needs and to exercise their right to self-determination. Instead, this change is intended to untie the hands of EA/AAR workers in their efforts to act on behalf of the individual. While it is true that EA/AAR workers are *not* always working “at the request” of the person, they are working solely for the benefit of the individual at risk.³ EA/AAR staff has extensive discretion in responding to reports. Based on a review of the situation and discussions with the individual, county staff use judgment as to what is best for the person, including accepting a competent individual’s decision to discontinue any inquiry.

2. Restraining Orders and Injunctions⁴

Prior to 2006, Wisconsin’s vulnerable adult restraining order was more accurately a “non-interference with investigation and service provision” statute. The new law creates a domestic violence restraining order for elder adults/adults at risk, expanding who may request the restraining order and what behavior may be restrained (e.g., financial exploitation, emotional abuse, mistreatment of an animal).

The revised individual at risk restraining order may be petitioned for by:

- an elder adult/adult at risk,
- his or her guardian,
- an interested person acting on behalf of an individual at risk, or
- an EA/AAR agency.

² Deleted Wisconsin Statute: 46.90 (5)(g). An elder person may refuse to allow an investigation under this subsection. The investigator shall notify the elder person of this right to refuse before or at the point of commencing an investigation.

³ S. 46.90 (5m) (br) 2. and 55.043 (4) (b) 2.

⁴ S. 55.043(3) and 46.90 (5) (d)

The individual at risk may experience cognitive, mental or communication impairments; may be dependent on the abuser; or may have greater vulnerability to retribution. These conditions can make the elder adult/adult at risk unwilling or unable to petition for him or her self. If someone other than the elder adult/adult at risk petitions for a restraining order, that person must notify the individual at risk and the court must appoint a guardian ad litem. The guardian ad litem interviews the individual at risk and others, investigates concerns, and makes a recommendation to the court.

Based on information obtained from the guardian ad litem and others, including the individual at risk, the court may grant the petition. In issuing the restraining order/injunction the court may order the alleged abuser to avoid interference with an investigation of abuse, with the delivery of protective services or protective placement, or with the provision of services to the elder adult/adult at risk. The court may impose other conditions. For instance, the abuser may be required to cease the abuse, financial exploitation, neglect, harassment or stalking of an individual at risk, or to stop any mistreatment of an animal, or to avoid the residence of the individual at risk.

An EA/AAR worker may believe an individual at risk is uncooperative and deliberately blocking an investigation, for example to protect a family member. Seeking a restraining order/injunction against the individual at risk is not allowable under the law. In addition, it is not good practice to further alienate the individual at risk. Instead, EA/AAR staff can use advice, persuasion and encouragement while continuing to respect the wishes of the individual at risk. The worker should focus on building a trusting relationship with the individual at risk and on making him or her aware of available assistance.

Likewise, an individual at risk restraining order cannot be used to order an individual at risk to stop engaging in self-neglect. Only when advice, persuasion and encouragement fail, and risk is still present, would an elder adults/adults-at-risk worker potentially use more strident (legal) intervention. Appropriate court orders for use in self-neglect cases may include an order for protective services or placement under Ch. 55 or for commitment under Ch. 51.

CONCLUSION

The 2006 revisions to the elder abuse and adult protective services statutes created a coordinated, collaborative and modernized system and represent the most sweeping changes to laws affecting adults at risk in Wisconsin's history. While law enforcement's role has been expanded within these laws, the statutes ensure that EA/AAR agencies are victim-centered with a focus on providing the services needed to keep an individual safe.

The table below shows examples of the difference in the social work philosophy and the law enforcement philosophy. These examples are intended to show why EA/AAR services should continue to be provided based on a social work model.

Responders: Social Work Philosophy	Investigators: Law Enforcement Philosophy
Focus on reducing/eliminating risk of abuse.	Focus on gathering of evidence.
Focus on the individual at risk.	Focus on the alleged abuser.
The individual at risk is seen as a possible victim and potential consumer.	The individual at risk is seen as a “witness” or “victim.”
Focus on the FUTURE. What interventions or services will help reduce the risk of abuse?	Focus on the PAST. Has a crime been committed?
What evidence is available to help determine needed services?	What evidence is available to use in a potential prosecution?
Type of Action/Response is at the discretion of the worker.	Action/Response is very limited when they believe a crime has been committed.
Ultimate outcome is a safe individual.	Ultimate outcome is the conviction of an abuser.
The same responsibilities apply in cases of self-neglect as in cases where there is an abuser.	Self neglect cases seldom reach into the law enforcement universe.
Design services to meet the long- term protection goals of the individual.	Focus on short term: meeting the immediate needs for safety.

Of course, these philosophies/purposes overlap. Prosecution, or the threat of prosecution, may be part of keeping an individual safe. Protection of victims and prevention of future crimes are also important law enforcement roles.

Both law enforcement and EA/AAR staff have their respective roles and strengths when it comes to protecting and serving. The more agencies communicate and understand their roles and strengths in protecting individuals at risk, the more likely they are to develop a successful plan for the security of the individual at risk.

APPENDIX A: Considerations about when, and whether, to involve law enforcement in your response to an EA/AAR report of abuse, neglect or financial exploitation.

Situations where law enforcement may be helpful/instrumental in protecting an elder adult/adult at risk:

- If there is a risk of harm to the individual or to the EA/AAR worker or a risk of interference, the agency may want to use its authority to ask a sheriff or police officer to accompany the worker during a visit to the residence of the elder adult/adult at risk or to provide other assistance.
- If the EA/AAR worker believes that a quick arrest of a suspected perpetrator may be the fastest way of preventing further harm, and of getting the individual at risk out of the perpetrator's control.
- This SafetyNetWorks defines the EA/AAR worker as a person-centered responder, while law enforcement officials assume the role of investigators. If an EA/AAR worker suspects a crime, s/he may judge that it is more effective to bring in law enforcement while evidence is still fresh or before suspected perpetrators have been alerted to the fact that a report has been made.
- In some counties, law enforcement agencies may be better able to get court orders for warrants to enter a residence or to seize evidence before it can be destroyed or hidden.
- If a crime has been committed, elder adults/adults at risk have the same rights and protections under the law as all citizens.

Situations where the involvement of law enforcement may have a negative impact on efforts to protect the elder adult/adult at risk:

- The individual at risk may be more willing to cooperate with an investigation aimed at provision of protective services than with an investigation that could result in prosecution of an alleged perpetrator who is a friend or family member.
- The involvement of a uniformed officer may damage the possibility of building an open, trusting relationship between the individual at risk and the EA/AAR worker.
- As we stated above, law enforcement has less discretion in responding to a situation that meets the definition of a crime. If the elder adult/adult at risk perceives a loss of control and an invasion of privacy, s/he may be less likely to cooperate or listen to recommendations for his/her safety.
- Criminal prosecution may put the person through a traumatic but ultimately futile process, especially if the victim is not committed to it. This is difficult to judge when a report is first made, but may be a reason to involve the victim and those who know the victim well in the decision of whether to involve law enforcement.