

Parting with an Unwanted Guest

World Elder Abuse Awareness Day Conference
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Presenter: Laura Orr, staff attorney
Minnesota Elder Justice Center

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The Minnesota Elder Justice Center

- Our Mission: To prevent and alleviate abuse, neglect, and financial exploitation of older adults and vulnerable adults.
- Our Values: MEJC is committed to being an anti-racist organization and creating an environment that promotes the understanding of and appreciation for the value of diversity, equity, inclusion, and cultural humility.
- Our Work: Public Awareness; Professional Education; Public Policy; and Direct Service.

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Direct Service

To access a Victim Services advocate:

- Call 651-440-9312
- “Victim Services” form on our website:
<https://elderjusticemn.org/our-services/victim-services/>

The Presenter



Laura Orr

- Staff attorney providing direct services and professional consultation
- 14 years serving older adults and vulnerable adults in social and economic need.

More detail on past experience

- Southern Minnesota Regional Legal Services, Inc.
- Interprofessional Center for Counseling and Legal Services at the University of St. Thomas
- Lived in assisted living for six weeks as a family caregiver

The Presentation



Parting with an Unwanted Guest

- Older adults and vulnerable adults may permit guests to stay at their homes for a variety of reasons.
- The arrangements can turn exploitative if the initially welcomed guest overstays their welcome, refuses to find alternative housing, or embarks upon controlling behavior.
- Staff attorney Laura Orr of the Minnesota Elder Justice Center will offer insights into legal inventions potentially available when homeowners or renters need help seeking parting with unwanted guests.

A photograph of wooden blocks spelling out 'THANK YOU' on a wooden plank. The blocks are light-colored wood with black letters. The background is a blurred green and yellow bokeh. The plank is a natural wood color with some knots and grain visible.

THANK YOU

Thank You for Being Here

Scenarios Inspiring MEJC to Address This Topic

- A family member moved in due to insufficient resources, is not contributing to household expenses, and has become a financial burden.
- A short-term renter has not moved out as agreed, has not paid rent, or acts abusively toward the homeowner's property and the homeowner as a person.
- An adult child never moved out and is starting to act like the home belongs to them.

Abuse in Later Life Power & Control Wheel

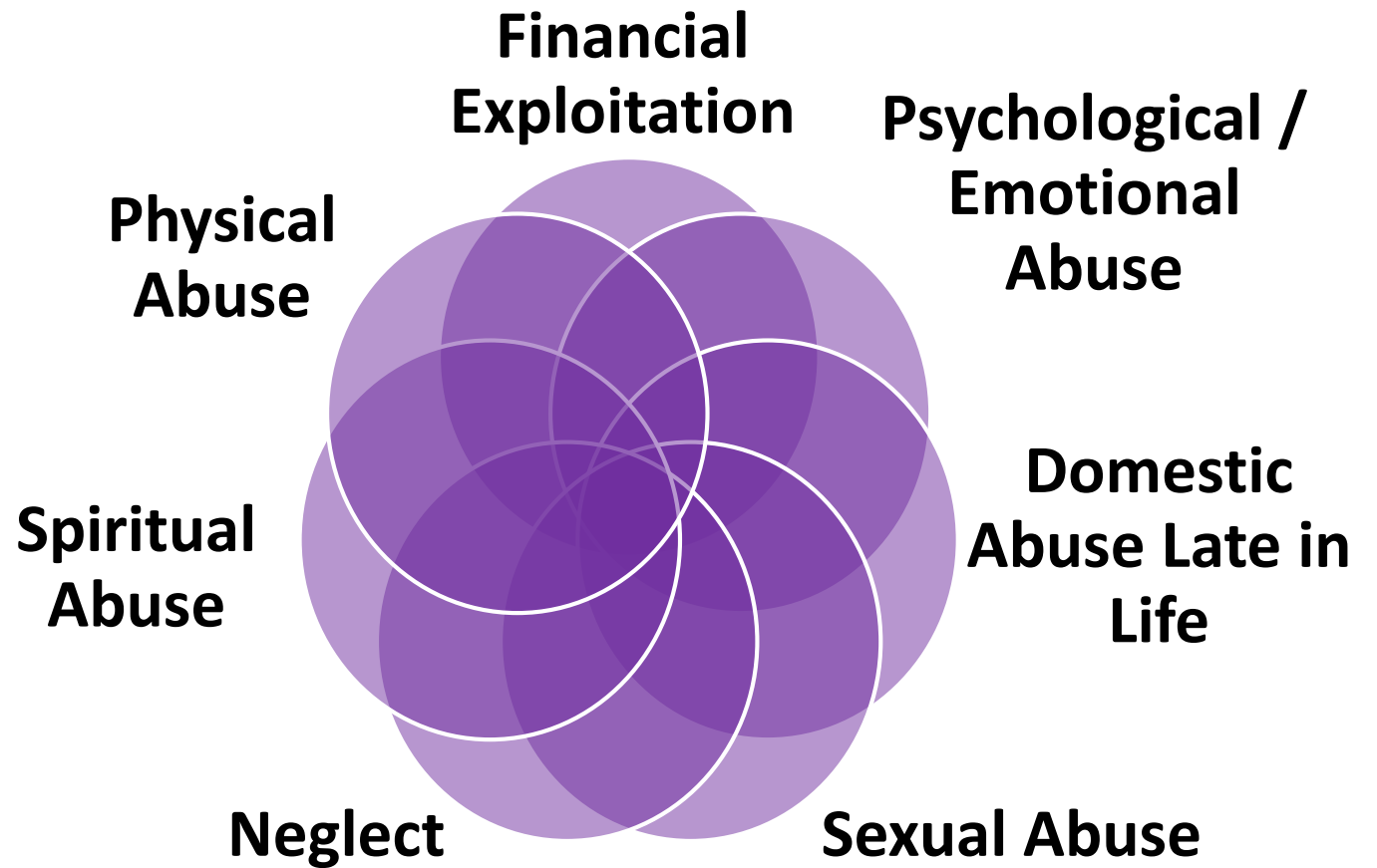


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Elder Abuse as Domestic Violence

- About 65% of MEJC participants report the perpetrator as a family member, friend, or someone they know through other associations.
- Financial exploitation is discussed in two-thirds (2/3) of MEJC helpline calls.
- Many helpline callers experience more than one type of victimization.

Poly-victimization



* Source: Dong, X., Simon, M. A., & Gorbien, M. Elder abuse, neglect, and exploitation: Risk factors and prevention strategies. *Journal of Gerontological Social Work*, 33, 5-25. (2007).

National Institute for Justice
<https://nij.ojp.gov/library/podcast/defining-studying-elder-abuse-polyvictimization#:~:text=So%2C%20polyvictimization%20is%20the%20co,a%20societal%20expectation%20of%20trust.>



Parting with an unwanted guest can be complicated—emotionally and legally.

MEJC Victim Services

Empowerment

Support

Tools

- Respect
- Listening
- Information
- Systems Navigation
- Participant-Led Planning

Three Options Involving Legal Intervention

- Criminal trespass
- Eviction
- Protective orders
 - Order for protection (OFP)
 - Harassment restraining order (HRO)

Criminal Trespass – The Law

“A person is guilty of a misdemeanor if

- the person intentionally [...] returns to the property of another
- within one year after being told
 - ☐ to leave the property and
 - ☐ not to return,

if the actor is without

- claim of right to the property or
- consent of one with authority to consent.”

Minn. Stat. § 609.605, subd. 1(b)(8)

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Criminal Trespass – What Happens Next

1. The homeowner or tenant named on the lease calls law enforcement to report the unwanted guest as trespassing.
2. If the law enforcement officer agrees that the unwanted guest has trespassed, the law enforcement officer may issue a citation or proceed with other intervention to ensure that the unwanted guest leaves.
3. A prosecutor represents the local city or county in any legal case if the unwanted guest challenges any misdemeanor charge of criminal trespass.

Criminal Trespass

Pros

- The host does not need to file a legal case or have a lawyer.
- Generally effective when the host is a renter on a lease and the guest is not on the lease

Cons

- The host depends on the priorities, discretion, and training of local law enforcement and prosecutor.
- Less effective when the host is a homeowner and the guest reports living with the homeowner

Criminal Trespass

Pros

- If the host is renter with a supportive landlord, the landlord may contact law enforcement.
- Enforces an objective standard that the guest has no right to be present

Cons

- The host may be hesitant to call law enforcement on the guest.
- Less private than other interventions

Eviction – The Law

“A person may be evicted if the person has unlawfully or forcibly occupied or taken possession of real property or unlawfully detains or retains possession of real property.”

Minn. Stat. § 504B.301

The host needs to file an eviction complaint listing facts that show the unwanted guest's presence is unlawful.

- An absence of monthly rental payments or a written lease are not enough to show that the guest's ongoing presence is unlawful.

Residential Tenants Have Rights.

“Residential tenant’ means

- a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, [or]
- all other regular occupants of that dwelling unit [...].”

Minn. Stat. § 504B.001, subd. 11.

If the unwanted guest fits the definition of a “residential tenant” and no written lease exists, the court will recognize a “tenancy at will.”

Terminating a Tenancy at Will

“A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.”

Minn. Stat. § 504B.001, subd. 11.

The host must give the unwanted guest three (3) months' written notice to move out before filing the eviction if the unwanted guest stayed at the host's home without an agreement to pay rent or any monthly expense.

...Unless

Unlawful activity voids right of possession. Minn. Stat. § 504B.171.

An unwanted guest loses any arguable right to stay at the host's home if the host can prove that the guest allowed certain criminal activities to happen on the property.

These criminal activities include

- allowing controlled substances on the property
- prostitution
- unlawful firearm possession
- possession of stolen property
- domestic abuse, harassment, sexual extortion, or criminal sexual conduct against another authorized occupant

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Eviction

Even in circumstances qualifying for expedited relief, removing an unwanted guest through the eviction process can take weeks and even months.

If abuse is occurring, a protective order is often a faster and firmer source of relief.

Protective Orders

Order for Protection (OFP)

- May “exclude the abusing party from the dwelling” Minn. Stat. § 518B.01, subd. 6(a)(2).
- “A petition for relief shall allege the existence of domestic abuse.” Minn. Stat. § 518B.01, subd. 4(a).

Harassment Restraining Order (HRO)

- May order “the respondent to have no contact with another person” Minn. Stat. § 609.748, subd. 5(a)(2).
- “A person who is a victim of harassment [...] may seek a restraining order.” Minn. Stat. § 609.748, subd. 2(a).

Protective Orders

Order for Protection (OFP)

“Domestic abuse” means

- “physical harm, bodily injury, or assault;”
- “the infliction of fear of imminent physical harm, bodily injury, or assault;” or
- terroristic threats [...]; criminal sexual conduct [...]; sexual extortion [...]; or interference with an emergency call.”

Minn. Stat. § 518B.01, subd. 2(a).

Harassment Restraining Order (HRO)

“Harassment” means

- “a single incident of physical or sexual assault;” or
- “repeated incidents of intrusive or unwanted acts, words, or gestures” that have or are intended to have “a substantial adverse effect on the safety, security, or privacy of another.”

Minn. Stat. § 609.748, subd. 1(a)(1).

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Protective Orders

Order for Protection (OFP)

“Domestic abuse” is “committed against a family or household member by a family or household member.”

Minn. Stat. § 518B.01, subd. 2(a).

"Family or household members" include “persons who are presently residing together or who have resided together in the past.”

Minn. Stat. § 518B.01, subd. 2(b)(4).

Harassment Restraining Order (HRO)

Acts of “harassment” qualify for relief “regardless of the relationship between the actor and the intended target.”

Minn. Stat. § 609.748, subd. 1(a)(1).

**Relationship and
residence do not matter.**

Protective Orders

- Forms for requesting OFPs and HROs are generally available at local courthouses via law libraries and self-help centers.
- MNCourts.gov offers forms that people seeking help may
 - Complete and print: <https://mncourts.gov/GetForms.aspx>
 - Complete and file electronically:
<https://minnesota.tylertech.cloud/SRL/SRL>

Resources for Support and Guidance

- MEJC Victim Services: 651-440-9312
- MN Day One Crisis Hotline: 1-866-223-1111
- Minnesota Legal Aid Help Line: 1-877-696-6529
(1-877-MY-MN-LAW)

Questions? Suggestions?

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