

Preventing and Investigating Misappropriation

Douglas S. Henning, M.S.
Investigative Agent
Miami Co. Board of Developmental Disabilities

Misappropriation OAC 5123:2-17-02 (15)(a)(iv)

"Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including Chapters 2911 and 2913. of the Revised Code.

codes.ohio.gov

ORC 2911- Agg. Robbery; Robbery; Agg. Burglary; Breaking and Entering

ORC 2913- Theft (2913.02); Identity Fraud; Illegal Use of Food Stamps; Possession of Controlled Substances (Drug Theft)

Applicable ORC Code Sections

2913.73 Evidence that victim lacked capacity to give consent.
In a prosecution for any alleged violation of a provision of this chapter, if the lack of consent of the victim is an element of the provision that allegedly was violated, evidence that, at the time of the alleged violation, the victim lacked the capacity to give consent is admissible to show that the victim did not give consent.
As used in this section, "lacks the capacity to consent" means being impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning the person or the person's resources.

Applicable ORC Code Sections

2913.71 Felony of fifth degree regardless of the value of the property.

Regardless of the value of the property involved and regardless of whether the offender previously has been convicted of a theft offense, a violation of section 2913.02 or 2913.51 of the Revised Code is a felony of the fifth degree if the property involved is any of the following:

- (A) A **credit card**;
- (B) A **printed form for a check or other negotiable instrument**, that on its face identifies the drawer or maker for whose use it is designed or identifies the account on which it is to be drawn, and that has not been executed by the drawer or maker or on which the amount is blank;

Applicable ORC Code Sections

2913.02 Theft.

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

- (1) Without the consent of the owner or person authorized to give consent;
- (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
- (3) By deception;
- (4) By threat;
- (5) By intimidation.

- (B)
- (1) Whoever violates this section is guilty of theft.

Protected Class Provision

Theft-2913.02 (B)(3)

(3) Except as otherwise provided in division (B)(4), (5), (6), (7), (8), or (9) of this section, if the victim of the offense is an elderly person, **disabled adult**, active duty service member, or spouse of an active duty service member, a violation of this section is theft from a person in a protected class, and division (B)(3) of this section applies. Except as otherwise provided in this division, theft from a person in a protected class is a **felony of the fifth degree**.

ORC Disabled Adult Definition

Disabled Adult Definition 2913.01 (DD)

"Disabled adult" means a person who is eighteen years of age or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least twelve months without any present indication of recovery from the impairment, or who is eighteen years of age or older and has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons.

Identity Fraud

2913.49 Identity fraud.

(A) As used in this section, "personal identifying information" includes, but is not limited to, the following: the name, address, telephone number, driver's license, driver's license number, commercial driver's license, commercial driver's license number, state identification card, state identification card number, social security card, social security number, birth certificate, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, money market account number, mutual fund account number, other financial account number, personal identification number, password, or credit card number of a living or dead individual.
(B) No person, without the express or implied consent of the other person, shall use, obtain, or possess any personal identifying information of another person with intent to do either of the following:
(1) Hold the person out to be the other person;
(2) Represent the other person's personal identifying information as the person's own personal identifying information.
(C) No person shall create, obtain, possess, or use the personal identifying information of any person with the intent to aid or abet another person in violating division (B) of this section.
(D) No person, with intent to defraud, shall permit another person to use the person's own personal identifying information.
(E) No person who is permitted to use another person's personal identifying information as described in division (D) of this section shall use, obtain, or possess the other person's personal identifying information with intent to defraud any person by doing any act identified in division (B)(1) or (2) of this section.

Illegal Use of Food Stamps

2913.46 Illegal use of food stamps or WIC program benefits

(B) No individual shall knowingly possess, buy, sell, use, alter, accept, or transfer supplemental nutrition assistance program benefits, WIC program benefits, or any electronically transferred benefit in any manner not authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) or section 17 of the "Child Nutrition Act of 1966," 80 Stat. 885, 42 U.S.C. 1786, as amended.
(C) No organization, as defined in division (D) of section ~~2901.32~~ of the Revised Code, shall do either of the following:
(1) Knowingly allow an employee or agent to sell, transfer, or trade items or services, the purchase of which is prohibited by the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) or section 17 of the "Child Nutrition Act of 1966," 80 Stat. 885, 42 U.S.C. 1786, as amended, in exchange for supplemental nutrition assistance program benefits, WIC program benefits, or any electronically transferred benefit;
(2) Negligently allow an employee or agent to sell, transfer, or exchange supplemental nutrition assistance program benefits, WIC program benefits, or any electronically transferred benefit for anything of value.
(D) Whoever violates this section is guilty of illegal use of supplemental nutrition assistance program benefits or WIC program benefits. Except as otherwise provided in this division, illegal use of supplemental nutrition assistance program benefits or WIC program benefits is a felony of the fifth degree.

Possession of a Controlled Substance

2925.11 Possession of controlled substances.
(A) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.

Most Common Forms of Misappropriation

- Checks
- Debit Cards/Online
- Credit Cards/Online
- Cash/Change
- Identity Theft
- Food Stamp Card
- Payee

Investigation Process

- Follow ALL Category A Protocol Investigation Steps
- Investigation started immediately or no later than 24 hours
 - Interview Reporter of incident
 - Gather relevant documents (incident reports, progress notes etc)
 - Notify LE or CSB if necessary and document time, date, and name of the person notified
 - Initiate interviews with witnesses or victims
 - Interview Victim no later than three (3) working days following notification of MUI and document the results
 - Visit the Scene of the incident
 - Secure physical evidence-photographs, sketch scene, injury details, environment
 - Follow up with LE (if applicable) and obtain copy of police report
 - Review all relevant documents relating to the PPI and the victim
 - Interview persons with relevant information about the incident and document the interviews. Obtain written statements.
 - Interview PPI and document the interview. Obtain a written statement if possible.
 - Interview medical professionals (if applicable)
 - Conduct follow up interviews (if necessary)
 - Evaluate all witnesses and documentary evidence in a clear, complete and non-ambiguous manner
 - Evaluate the credibility of witnesses based on Appendix A noted factors
 - Complete written report based on Appendix A requirements

Category A Investigation Requirements

General Category A Investigation Requirements Apply

Incident Specific Requirements – Exploitation or Misappropriation

1. Document that there was an unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit or gain of the primary person involved.
2. Document the depriving, defrauding, or otherwise obtaining the real or personal property of an individual by means prohibited by the Revised Code. Include any indication of the intent of the primary person involved.
3. Describe any items taken from the individual or anything received by the primary person involved as a result of the exploitation or misappropriation.
4. Gather copies of all financial records related to the incident, including cancelled checks.
5. Document the time, date, and officer's name for law enforcement agency notification.
6. Include any indication that the individual may have consented or not consented to the taking of his or her property or to the exploitation.
7. Verify that the property belonged to the individual.
8. Provide a description of how the improper act occurred.
9. Obtain the outcome of a criminal case, if resolved.

What to Do:

- Establish that the individual's ownership of the resource
 - Location of the resource (lockbox, bedroom etc.), Papers
- Establish that the PPI used the resource for their personal gain
 - Items purchased were not used to the benefit of the individual served
- Ensure that the act(s) meet ORC elements
- Describe in detail the resource/items that were taken/used
- Any and all bank statements/financial transaction records
- Describe how the improper act occurred
- Contact Law enforcement

Food Stamps/Drug Theft:

- Food Stamps
 - Food Stamp cards are used like debit cards
 - Only work for grocery items
 - Determine who had access to card and when it was taken/used
 - Purchases can be tracked in the same manner
 - Determine if purchase in question is suspicious or out of the ordinary.
- Drug Theft
 - Determine what meds are missing, when they went missing, what staff was working, previous med errors
 - Determine abuse potential/street value of drug/resale potential
 - LE Report

Identity Fraud:

- Determine how identity was compromised
- Assist in obtaining credit report/place fraud block
- Determine fraudulent accounts
- Follow up on information contained on account (mailing addresses, phone numbers etc)
- Research/Obtain information on transactions to determine who benefitted from charges made
- LE Report
- Educate individual on how to protect their personal information as best as possible based on the circumstances

How to Obtain the Information You Need:

- Obtain copies of **bank/CC statements** from individual, payee, or Guardian
- **Review normal expenditures** -you have to establish what is normal so you know what is not normal
- Identify suspicious transactions-think about what type of transaction it is (retail, ATM, credit etc.)
- Gather information based on the transaction type
- Gather information on your PPI (employment/discipline history, public access records, interviews)
- Use this information to meet the ORC elements/Cat A Req
- Present this information to law enforcement in the most organized manner possible (spreadsheet if possible)

Retail transactions:

- Seek out Loss Prevention Manager (title may vary); store manager may be able to pull transaction but not usually surveillance video
Depending on your area, a visit to introduce yourself may help
- Establish rapport and explain who you are and what your purpose is
- Establish retention period for transaction information and also video surveillance
Depends on system capabilities and time between transaction and your inquiry
- Inquire on obtaining copies of transactions and video surveillance of transaction(s) in question
- In Store Gift Cards (if purchased) are easily traceable; gift cards from other establishments from kiosk are not able to be tracked
- Most retail establishments do not require a subpoena

Credit Card Transactions:

- Obtain whole 16 digit number if possible
- 4=Visa; 5=MC; 6=Discover
- Determine if transaction was online or card was present
- Contact Fraud Department of Issuing Bank-ask for Fraud Investigations
- May be able to provide statement copies with permission of cardholder
- May be able to provide copy of signed CC slip if available
Under certain dollar amounts no signature required

General Transactions:

- Research Name and location of charge
- Ask for manager and explain nature of your investigation
- Gas/Restaurants may be difficult to obtain information
- Look at location and dollar amount of transaction to evaluate appropriateness of charge/transaction
- Ask for any available documentation on transaction from company or establishment
- May request a formal request on agency letterhead
- Follow up if information not received when promised

Law Enforcement:

- Ensure your case is presented in a logical, thought out manner
- Establish elements from ORC based on the type of misappropriation you are investigating
- Utilize team approach; ask how you can help or assist
- Provide LE with information you have collected so far in a logical, concise manner (use spreadsheet if needed for multiple charges)
- Ensure LE understands the relationship between the PPI and the Individual
- Educate LE regarding disability/communication challenges with individual
- Ask for timelines for check in/follow up
- It doesn't matter who does what as long as it is done and done right! You are a team!

Prosecution:

- Once case is complete, arrest may or may not have been made
- LE presents case to prosecutor for consideration for prosecution
- If Felony, Grand Jury is next step; Misdemeanor-Arrestment
- If available, utilize Victim-Witness services through the prosecutor's office
- Attend all court dates if possible, showing investment in the process
- Through victim-witness, allow individual and IA to provide input at plea bargaining and sentencing
- Advise of abuser registry process and ask for order of no contact with victim; ask for order barring PPI from employment in care related occupational fields
- Restitution-establish an amount based on loss amount to the individual and be able to justify amount to prosecution/defense

Case Study-"Amy Wrong"



Media Attention

Sidney woman stole from client she was assisting

Staff report

TROY — A Sidney woman will learn her fate at her upcoming Aug. 25 sentencing hearing after she was convicted of felony theft in common pleas court Tuesday for stealing money from a woman she was supposed to be helping.

Amy L. Wright, 46, entered a plea of no contest to theft charge at her court hearing and a judge found her guilty.

Wright, indicted by the grand jury in May, committed the theft against a client she was helping through

the Miami County Board of Developmental Disabilities and the amount she stole was between \$1,000 to \$7,500.

According to her indictment, Wright stole money between August of last year through January of this year.

A presentence investigation on Wright was ordered.

Wright is out of jail on a recognizance bond.

In addition to any prison sentence she could receive, Wright could also be ordered to make full restitution to the victim in the case.

UIR

It all started with the Unusual Incident Report form that was completed and faxed to the Investigative Agent

Investigation:

- Bank Statements
- Wal-Mart Transactions-3 stores
- Spread Sheet
- Police Report
- Sentencing Letter
- 2nd victim identified/PPI Charged
- Info request letter

Prevention:

- Ensure Individuals served are educated about how to protect their property and financial information
- Establish track record of holding individuals accountable who are found to have committed Misappropriation
- Encourage reporting of any suspicious transactions or activity
- Use team approach to investigate possible suspicious situations to minimize loss and be proactive
- Look for additional victims from same PPI
- Think of non-traditional ways misappropriation could take place with our individuals based on individual circumstances

Questions?



DOUGLAS S. HENNING
INVESTIGATIVE AGENT

1625 Troy-Sidney Road PH 937/440-3064
Troy, Ohio 45373-9794 FAX 937/352-1807
Website: www.riversidedd.org MOBILE 937/524-1727
Email: doug.henning@riversidedd.org AFT. HRS. 937/875-0484
