

Elder and Dependent Adult Abuse

406.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation and reporting of suspected abuse of certain adults who may be more vulnerable than others. This policy also addresses mandatory notification for Department Members as required by law.

406.1.1 DEFINITIONS

Definitions related to this policy include:

Adult abuse: Any offense or attempted offense involving violence or neglect of an adult victim when committed by a person responsible for the adult's care, or any other act that would mandate reporting or notification to a social service agency or law enforcement (Penal Code § 368). For purposes of this policy, all references to "adult abuse" mean the abuse of an elder (age 65 or older) or dependent adult.

Abuse of an elder (age 65 or older) or dependent adult: Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering (Welfare and Institutions Code § 15610.07; Penal Code § 368.5). Neglect includes self-neglect (Welfare and Institutions Code § 15610.57).

Dependent adult: An individual, regardless of whether the individual lives independently, between 18 and 64 years of age who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/her rights, including but not limited to persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. This also includes those between the ages of 18 and 64 who are admitted as inpatients to a 24-hour health facility, as defined in state law (Welfare and Institutions Code § 15610.23; Penal Code § 368(h)).

406.2 POLICY

The Department shall investigate all reported incidents of alleged adult abuse and ensure proper reporting and notification as required by law.

406.3 MANDATORY NOTIFICATION AND REPORTING REQUIREMENTS

Department Members are mandated reporters of suspected elder or dependent adult abuse (Welfare and Institutions Code § 15630(a)). A Department Member who, in his or her professional capacity or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be abuse, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting abuse, or reasonably suspects that abuse, shall report the known or suspected abuse to the law enforcement agency in whose jurisdiction the known or suspected abuse occurred.

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The Department Member shall forward all reports of known or suspected abuse occurring in the Department's jurisdiction to the corresponding Detail of the Investigations Division, according to the nature of incident. In any incident in which immediate investigative follow-up would be beneficial or required, notification shall be made to the Department Commander and a response will be coordinated through the appropriate Investigative Detail Sergeant. The Department Member shall also ensure that notification is made by telephone to APS as soon as practicably possible and the Report of Suspected Dependent Adult/Elder Abuse (Form SOC 341) is provided to APS by the end of their assigned shift. For further refer to Welfare and Institutions Code 15630.

The corresponding Investigative Detail Sergeant is responsible for ensuring that proper notifications have occurred to the District Attorney's Office and any other regulatory agency that may be applicable based upon where the abuse took place (e.g., care facility, hospital)(Welfare and Institutions Code § 15630(b)).

Notification is not required for a person who was merely present when a person self-administered a prescribed aid-in-dying drug or a person prepared an aid-in-dying drug so long as the person did not assist the individual in ingesting the aid-in-dying drug (Health and Safety Code § 443.14 and 443.18).

406.4 INVESTIGATIONS AND REPORTING

All reported or suspected cases of adult abuse require investigation and a report, even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of adult abuse should address, as applicable:

1. The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected adult abuse victim is contacted.
2. Any relevant statements the victim may have made and to whom he/she made the statements.
3. If a person is taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
4. Documentation of any visible injuries or any injuries identified by the victim. This should include photographs of such injuries, if practicable.
5. Whether the victim was transported for medical treatment or a medical examination.
6. Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other potential victims or witnesses who may reside in the residence.
7. Identification of any prior related reports or allegations of abuse, including other jurisdictions, as reasonably known.
8. Previous addresses of the victim and suspect.

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9. Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.
10. Results of investigations shall be provided to those agencies (Adult Protective Services (APS), long-term ombudsman) that referred or reported the adult abuse (Welfare and Institutions Code § 15640(f)).
11. Whether a death involved the End of Life Option Act:
 - (a) Whether or not assistance was provided to the person beyond that allowed by law (Health and Safety Code § 443.14)
 - (b) Whether an individual knowingly altered or forged a request for an aid-in-dying drug to end a person's life without his/her authorization, or concealed or destroyed a withdrawal or rescission of a request for an aid-in-dying drug (Health and Safety Code § 443.17)
 - (c) Whether coercion or undue influence was exerted on the person to request or ingest an aid-in-dying drug or to destroy a withdrawal or rescission of a request for such medication (Health and Safety Code § 443.17).
 - (d) Whether an aid-in-dying drug was administered to a person without his/her knowledge or consent (Health and Safety Code § 443.17).

Any unexplained death of an adult who was in the care of a guardian or caretaker should be considered as potential adult abuse and investigated similarly.

406.5 QUALIFIED INVESTIGATORS

Qualified investigators should be available to investigate cases of adult abuse. These investigators should:

1. Conduct interviews in appropriate interview facilities.
2. Be familiar with forensic interview techniques specific to adult abuse investigations.
3. Present all cases of alleged adult abuse to the prosecutor for review.
4. Coordinate with other enforcement agencies, social service agencies and facility administrators as needed.
5. Provide referrals to therapy services, victim advocates, guardians and support for the victim and family as appropriate.
6. Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 15610.55).

406.6 EMERGENCY PROTECTIVE ORDERS

In any situation which a Member reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse (other than financial abuse alone), the Member may seek an emergency protective

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order against the person alleged to have committed or threatened such abuse (Family Code § 6250(d)).

406.7 INTERVIEWS

406.7.1 PRELIMINARY INTERVIEWS

Absent extenuating circumstances or impracticality, Members should audio record the preliminary interview with a suspected adult abuse victim. Members should avoid multiple interviews with the victim and should attempt to gather only the information necessary to begin an investigation. In certain circumstances, investigating officers may defer interviews when a person who is specially trained in such interviews is available.

406.7.2 DETAINING VICTIMS FOR INTERVIEWS

A Member should not detain an adult involuntarily who is suspected of being a victim of abuse solely for the purpose of an interview or physical exam without his/her consent or the consent of a guardian unless one of the following applies:

1. Exigent circumstances exist, such as:
 - (a) A reasonable belief that medical issues of the adult need to be addressed immediately.
 - (b) A reasonable belief that the adult is or will be in danger of harm if the interview or physical exam is not immediately completed.
 - (c) The alleged offender is a family member or guardian and there is reason to believe the adult may be in continued danger.
2. A court order or warrant has been issued.

406.8 MEDICAL EXAMINATIONS

When an adult abuse investigation requires a medical examination, the investigating officer should obtain consent for such examination from the victim, guardian, agency or entity having legal custody of the adult. The Member should also arrange for the adult's transportation to the appropriate medical facility.

In cases where the alleged offender is a family member, guardian, agency, or entity having legal custody and is refusing to give consent for the medical examination, Members should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for Members to take the adult for a medical examination, the sergeant should consider other government agencies or services that may obtain a court order for such an examination.

406.9 DRUG-ENDANGERED VICTIMS

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of an adult abuse victim who has been exposed to the manufacturing, trafficking or use of narcotics.

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406.9.1 MEMBER RESPONSIBILITIES

Members responding to a drug lab or other narcotics crime scene where an adult abuse victim is present or where there is evidence that an adult abuse victim lives at the location should:

1. Document the environmental, medical, social and other conditions of the adult, using photography as appropriate.
2. Notify the Investigations Sergeant so an interagency response can begin.

406.9.2 SUPERVISOR RESPONSIBILITIES

The Family Protection Detail Sergeant should:

1. Work with professionals from the appropriate agencies, including APS, other law enforcement agencies, medical service providers and local prosecutors, to develop community specific procedures for responding to situations where there are adult abuse victims endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
2. Activate any available interagency response when a Member notifies the Investigations Sergeant that he/she has responded to a drug lab or other narcotics crime scene where an adult abuse victim is present or where evidence indicates that an adult abuse victim lives.

406.10 TRAINING

The Department shall provide training on best practices in adult abuse investigations to Members tasked with investigating these cases. The training shall include:

1. Participating in multidisciplinary investigations, as appropriate.
2. Conducting interviews.
3. Availability of therapy services for adults and families.
4. Availability of specialized forensic medical exams.
5. Cultural competence (including interpretive services) related to adult abuse investigations.
6. Availability of victim advocates or other support.

406.11 RECORDS DIVISION RESPONSIBILITIES

Records Division is responsible for retaining the original adult abuse report with the initial case file.

406.12 JURISDICTION

The Department has concurrent jurisdiction with state law enforcement agencies when investigating elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities (Penal Code § 368.5).

Adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect and may assist in criminal investigations if requested and consistent with federal

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law. However, the Department shall retain responsibility for the criminal investigations (Penal Code § 368.5).

406.13 RELEVANT STATUTES

Penal Code § 368 (c): A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

Penal Code § 368 (f): A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

Welfare and Institutions Code § 15310.05: "Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

Welfare and Institutions Code § 15610.06: "Abduction" means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

Welfare and Institutions Code § 15610.30:

1. "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:
 - (a) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (b) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (c) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.
2. A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

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3. For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.
4. For purposes of this section, “representative” means a person or entity that is either of the following:
 - (a) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
 - (b) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

Welfare and Institutions Code § 15610.43:

1. “Isolation” means any of the following:
 - (a) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
 - (b) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.
 - (c) False imprisonment, as defined in Section 236 of the Penal Code.
 - (d) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.
2. The acts set forth in paragraph 1(a) through (d) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.
3. The acts set forth in paragraph 1(a) through (d) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safe.

Welfare and Institutions Code § 15610.57:

1. “Neglect” means either of the following:
 - (a) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
 - (b) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

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2. Neglect includes, but is not limited to, all of the following:
 - (a) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
 - (b) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
 - (c) Failure to protect from health and safety hazards.
 - (d) Failure to prevent malnutrition or dehydration.
 - (e) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (a) to (d), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

Welfare and Institutions Code § 15610.63:

1. "Physical abuse" means any of the following:
 - (a) Assault, as defined in Section 240 of the Penal Code.
 - (b) Battery, as defined in Section 242 of the Penal Code.
 - (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.
 - (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
 - (e) Sexual assault, that means any of the following:
 1. Sexual battery, as defined in Section 243.4 of the Penal Code.
 2. Rape, as defined in Section 261 of the Penal Code.
 3. Rape in concert, as described in Section 264.1 of the Penal Code.
 4. Spousal rape, as defined in Section 262 of the Penal Code.
 5. Incest, as defined in Section 285 of the Penal Code.
 6. Sodomy, as defined in Section 286 of the Penal Code.
 7. Oral copulation, as defined in Section 287 or former Section 288a of the Penal Code.
 8. Sexual penetration, as defined in Section 289 of the Penal Code.
 9. Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.
 - (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
 1. For punishment.

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2. For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.
3. For any purpose not authorized by the physician and surgeon.