

Memorandum

Date: July 29, 2019
To: All Personnel
From: Sol Linver, Undersheriff
Subject: Senate Bill 1191 and PC 368.5 requirements for policy manuals



Sheriff's Bulletin: 19-5

This numbered bulletin is being distributed to provide an interim directive until such time as our agency policy for Adult Abuse (Lexipol #326) can be updated to reflect the changes that occurred as result of Senate Bill 1191 and the resulting added requirements within California Penal Code section 368.5.

Existing law makes it a crime for a person entrusted with the care or custody of any elder or dependent adult to willfully cause him or her to be injured or permit him or her to be placed in a situation in which his or her person or health is endangered. The law authorizes Adult Protective Services agencies (APS) and local long-term care ombudsman programs to investigate elder and dependent adult abuse. However, the law specifically states that law enforcement agencies retain exclusive responsibility for conducting criminal investigations.

SB1191 requires local law enforcement agencies and long-term care ombudsman programs to revise or include in their policy manuals, specified information regarding elder and dependent adult abuse, including a recitation of certain elements of California Penal Code section §368 and §368.5, which read as follows:

CALIFORNIA PENAL CODE

CHAPTER 13: Crimes Against Elders, Dependent Adults, and Persons with Disabilities

§368:

(a) The Legislature finds and declares that elders, adults whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or to protect their rights, and adults admitted as inpatients to a 24-hour health facility deserve special consideration and protection.

(b) (1) A person who knows or reasonably should know that a person is an elder or dependent adult

and who, under circumstances or conditions 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 is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If, in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If, in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(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. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) A person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:

(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(e) A caretaker of an elder or a dependent adult who violates any provision of law proscribing theft,

embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:

(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(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.

(g) As used in this section, "elder" means a person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means a person, regardless of whether the person lives independently, who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or 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. "Dependent adult" includes a person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means a person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for a single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for a single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. A defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

(l) Upon conviction for a violation of subdivision (b), (c), (d), (e), or (f), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order

may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(Amended by Stats. 2018, Ch. 70, Sec. 3. (AB 1934) Effective January 1, 2019.)

PC 368.5.

(a) Local law enforcement agencies and state law enforcement agencies with jurisdiction shall have concurrent jurisdiction to investigate elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities.

(b) 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 local law enforcement agencies in criminal investigations at the law enforcement agencies' request; however, law enforcement agencies retain exclusive responsibility for criminal investigations, notwithstanding any law to the contrary.

(c) (1) Every local law enforcement agency and long-term care ombudsman program shall, when the agency or program next undertakes the policy revision process, revise or include in the portion of its policy manual relating to elder and dependent adult abuse, if that policy manual exists, the following information:

(A) The elements of the offense specified in subdivision (c) of Section 368.

(B) The elements of the offense specified in subdivision (f) of Section 368.

(C) The requirement, pursuant to subdivisions (a) and (b), that law enforcement agencies have the responsibility for criminal investigations of elder and dependent adult abuse and criminal neglect, however, adult protective services agencies and long-term care ombudsman programs have authority to investigate incidents of elder and dependent adult abuse and neglect and may, if requested, assist law enforcement agencies with criminal investigations.

(D) As a guideline to investigators and first responders, the definition of elder and dependent adult abuse provided by the Department of Justice in its policy and procedures manual, dated March 2015, which defines elder and dependent adult abuse as 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."

(2) This subdivision does not require a long-term care ombudsman program that does not have a policy manual to create or adopt a policy manual.

(3) As used in this subdivision, the following terms have the following meanings:

(A) "Local law enforcement agency" means every municipal police department and county sheriffs' department.

(B) "Policy manual" means any general orders, patrol manual, duty manual, or other written document or collection of documents that provides field or investigative personnel with policies, procedures, or guidelines for responding to or investigating crimes, complaints, or incidents.



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