



Elder Abuse as an Emerging Public Health Concern:

Identifying Deficiencies in Law Enforcement Policy

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INTRODUCTION

Families across the country report inappropriate law enforcement response to abuse of elders and dependent adults. Some jurisdictions fail to apply appropriate penal codes to reports of kidnapping, false imprisonment, forced isolation, restraint, and sexual assault.

When a family reported extended imprisonment, isolation, and restraint of a resident in a southern California assisted living facility, the San Bernardino County Sheriff's Department determined that *No crime was committed*. A Deputy DA stated, *There is nothing out of the ordinary*. When family submitted evidence of repeated sexual assaults by a male caregiver a Deputy DA responded, *There is no evidence of a crime*.

ABSTRACT

The 2014-2015 Santa Clara County Civil Grand Jury received a complaint concerning failure of law enforcement to apply California Penal Code 368 to an investigation of false imprisonment and forced isolation of elderly residents in a San Jose, CA assisted living facility. San Jose Police Department reported, *it does not appear to me that this situation is a criminal neglect matter...* A Santa Clara County Deputy DA responded, *This is a civil issue*.

California Penal Code 368 provides criminal penalties for any person who causes or permits an elder or dependent adult to suffer unjustifiable physical pain or mental suffering. The complainant reported that San Jose Police Department and Santa Clara County DA failed to recognize false imprisonment and forced isolation as causing mental suffering. Therefore, law enforcement did not respond to those abuses as criminal acts.

The Grand Jury reviewed duty manuals of the eleven county law enforcement agencies and the County Sheriff's Office with respect to elder and dependent adult abuse. Santa Clara County's Elder Abuse Protocol was also reviewed.

METHODOLOGY

The Grand Jury reviewed law enforcement duty manuals, training materials, and the county's Elder Abuse Protocol. Numerous individuals throughout the county were interviewed.

Agencies were investigated concerning the following:

- Do county law enforcement manuals specifically reference Penal Code 368 or sufficiently encompass its intent?
- Is there uniformity among county law enforcement agencies as to appropriate response to reports of elder and dependent adult abuse?
- Do law enforcement officers receive sufficient training regarding elder and dependent adult abuse?
- Are there adequate avenues for reporting elder and dependent adult abuse so the District Attorney can prosecute?

REFERENCES BY DEPARTMENT

Law Enforcement Agency	Penal Code Section 368	Lexipol Policy 326	County Elder Abuse Protocol
Campbell Police Department	No	Yes	Yes
Gilroy Police Department	No	Yes	Yes
Los Altos Police Department	No	Yes	No
Los Gatos/Monte Sereno Police Department	No	Yes	Yes
Milpitas Police Department	No	Yes	No
Morgan Hill Police Department	No	Yes	No
Mountain View Police Department	Yes	Yes	No
Palo Alto Police Department	No	Yes	Yes
San Jose Police Department	No	No	No
Santa Clara Police Department	No	No	Yes
Office of the Sheriff of Santa Clara County	Yes	No	Yes
Sunnyvale Department of Public Safety	No	No	Yes

California Penal Code Section 368(c)

Any 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 . . . is guilty of a misdemeanor.

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DISCUSSION

Law enforcement policies referenced three resources concerning elder and dependent adult abuse: Penal Code Section 368, Lexipol Policy 326, and the county's Elder Abuse Protocol. (Findings are summarized in table at left)

Only Mountain View Police Department and the Sheriff's Department duty manuals specifically referenced Penal Code 368. Eight other law enforcement agencies incorporated a version of Lexipol's Policy 326 into their duty manuals.

Lexipol Policy 326 does not refer to Penal Code 368, California's penal code that addresses abuse of elders and dependent adults. Lexipol, LLC is a private company that provides pre-written policies for law enforcement agencies throughout the country. Elder rights advocates have repeatedly expressed their concerns to Lexipol, LLC.

San Jose Police Department is currently updating their duty manual. San Jose Police Department reports they are utilizing resources provided by the more progressive San Diego Police Department.

FINDINGS AND RECOMMENDATIONS

Finding #1: The San Jose Police Department* duty manual does not refer to Penal Code 368 or to the county's Elder Abuse Protocol. Elder abuse is located under the heading "Juvenile Contacts." Officers are directed to investigate "physical" elder abuse using the county's Child Abuse Protocol. There is no instructions for investigating emotional abuse.

Recommendation #1: The San Jose Police Department should revise its duty manual to refer to the County Elder and Dependent Adult Abuse Protocol.

Finding #2: The county's Elder Abuse Protocol is more than 100 pages long. The protocol contains inconsistent names for county agencies, and it fails to reference recent changes in the law.

Recommendation #2: The Elder Abuse Protocol for Santa Clara County Law Enforcement, dated July 2010, has not been revised in five years. It should be updated and shortened.

Finding #3: The Los Altos, Milpitas, Morgan Hill, and Mountain View Police Department duty manuals do not reference the Santa Clara County Elder Abuse Protocol.

Recommendation #3: These departments should revise their duty manuals to reference the Santa Clara County Elder Abuse Protocol.

Finding #4: There is no document summarizing resources available to elders or dependent adults who are victims of abuse.

Recommendation #4: County agencies should develop a document for law enforcement to provide to elder and dependent adult abuse victims advising them of available resources.

*San Jose, CA has over one million residents and is the tenth largest city in the nation.