

Adult Abuse

322.1 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 by Department employees as required by law.

322.2 DEFINITIONS

Adult Abuse - Any offense or attempted offense involving violence or neglect of adults over the age of 65 or any offense or attempted offense involving a dependent adult committed by a caregiver. This also includes any other act that would mandate notification to a social service/licensing agency or law enforcement agency related to the abuse of an adult. ¹

Dependent Adult - Any person between 18 and 64 years of age residing in this state, who has physical or mental limitations that 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. This includes any person between 18 and 64 years of age who is admitted as an inpatient to a 24-hour health facility, as defined in state law. ²

¹ Welfare. & Institutions Code §§ 15610.23, 15610.27

²Health & Safety Code §§ 1250. 1250.2 1250.3

322.3 MANDATORY NOTIFICATION

Any employee who has observed or has knowledge of an incident that reasonably appears to be adult abuse, is told by an elder or dependent adult that he or she has experienced abuse or who reasonably suspects abuse, shall make a report to the County Adult Protective Services agency as soon as practicable in the manner required by Welfare and Institutions Code section 15630.

Any Department employee who within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects such abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, immediately or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool within two working days.

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For purposes of notification, abuse is physical abuse, abandonment, abduction, isolation, financial abuse or neglect. Physical abuse includes any assault or sex crime. Financial abuse includes taking personal or real property by undue influence or intent to defraud. Notification is also made in cases of abandonment, abduction, isolation and neglect.

Notification also should be made to the following agencies if applicable and as soon as practicable as otherwise provided by Welfare and Institutions Code section 15630:

1. State Department of Public Health
2. State Department of Social Services
3. Bureau of Medi-Cal Fraud and Elder Abuse
4. California Department of Aging
5. State Department of State Hospitals
6. State Department of Developmental Services
7. Yolo County District Attorney's Office
8. Local Law Enforcement Agency

Failure to make a report within two working days or as provided is a misdemeanor.

The Unit Supervisor 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.

322.4 RECORDS BUREAU RESPONSIBILITIES

The Records Section is responsible for:

- (a) Providing a copy of the adult abuse report to the APS, ombudsman or other agency as applicable within two working days or as required by law. (Welfare and Institutions Code § 15630; Welfare and Institutions Code § 15640(c).)
- (b) Retaining the original adult abuse report with the initial case file.

322.5 JURISDICTION

The Yolo County Probation 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. (Pen. 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 upon request in such cases. However, this [department/office] will retain responsibility for the criminal investigations. (Pen. Code § 368.5.)

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322.6 RELEVANT STATUTES

Penal Code § 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, 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)

(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 § 15610.05

“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

(a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) 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.
- (2) 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.
- (3) 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.

(b) 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,

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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.

(c) 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.

(d) For purposes of this section, “representative” means a person or entity that is either of the following:

- (1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
- (2) 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

(a) “Isolation” means any of the following:

- (1) 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.
- (2) 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.
- (3) False imprisonment, as defined in Section 236 of the Penal Code.
- (4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(b) The acts set forth in subdivision (a) 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.

(c) The acts set forth in subdivision (a) 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

(a) “Neglect” means either of the following:

- (1) 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.

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(2) 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.

(b) Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) 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.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition or dehydration.

(5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), 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

15610.63. "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:

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- (1) For punishment.
- (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.