

PENAL CODE 368 — ELDER ABUSE

Elders/ Dependent Adults Are Less Able to Protect Themselves

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

Likely to Produce Great Bodily Harm...Penalties

(b) (1) Any 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.

Great Bodily Harm Penalties

(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.

Enhanced Manslaughter/Murder Charges

(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.

Knew Victim was Elder/Dependent Adult and Caused To Suffer

(c) Any person who knows or reasonable 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, with knowledge that he or she is an elder or a 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.

Penalties for Non-Caretaker Theft

(d) Any 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 by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950); and 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).

Caretaker Theft Penalties

(e) Any 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 by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950), and 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).

False Imprisonment

(f) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

Definitions

Elder:

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

Dependent Adult:

(h) As used in this section, "dependent adult" means any person 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 any 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.

Caretaker:

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

Use 368 in Addition to Other Charges

(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 any 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 any single offense.

Counseling as a Condition of Probation

(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. Any 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.

Phone Numbers To Use

Adult Protective Services:

(Elder/Dependent Adult Abuse)	1-800-491-7123
(CARE –Consumer Fraud)	1-800-476-7506
Ombudsman (Facility Abuse)	1-800-231-4024
Office on Aging (Resource Info)	1-800-510-2020
Mental Health's Helpline	(951)-686-4357
Alzheimer's/Dementia Registry	(951)-765-3172
Alzheimer's "Safe Return"	1-800-572-1122

★ Elder and Dependent Adult Abuse ★

Red Flags

Physical Abuse:

- Inadequately explained fractures, bruises, welts, cuts, sores, and burns
- Pressure "Bed" sores
- Bruise or burn patterns like those found with child abuse/ domestic abuse
- Medications used to restrain victim

Neglect (by self or others):

- Lack of basic body hygiene
- Lack of adequate food
- Lack of medical aids (glasses, walker, teeth, hearing aid, needed medications)
- Lack of clean, appropriate clothing
- Demented victim left unsupervised
- Bed bound victim left without care
- Home cluttered, filthy, in disrepair, or having fire and safety hazards
- Home lacking minimum equipment and facilities (stove, refrigerator, heat, cooling, working plumbing and electricity)
- Animal hoarding

Financial Abuse:

- Lack of amenities that victim could afford
- Victim "voluntarily" giving inappropriate financial reimbursement for needed care and companionship. (This is criminal when victim is under undue influence.)
- Caretaker has control of victim's money but is failing to provide for victim's needs.
- Caretaker "living off" victim
- Victim has signed property transfers, Power of Attorney, new will, etc. when unable to comprehend the transaction

In financial abuse cases it is important to get social security numbers and banking information to conduct a complete investigation.

Psychological Abuse:

- Caretaker isolates victim – restricts visits, phone calls (doesn't want to let you into home or speak to victim)
- Caretaker is violent, aggressive, controlling, addicted, or uncaring

Law Enforcement Officers are

MANDATED REPORTERS

of elder and dependent adult abuse.

If you observe, are verbally informed, or have knowledge that leads you to reasonably suspect that an elder or dependent adult is being abused or neglected you must call:

as soon as practically possible, but within 24 hours

Adult Protective Services

1-800-491-7123

within 2 working days fax SOC 341 report form to (951) 358-3969
or (951) 358-3979

If Abuse occurs in facility,
fax the SOC 341 to Ombudsman at (951) 686-1687.

If you respond to situations involving an elder or a dependent adult (see definitions on the reverse) evaluate for the following types of possible abuse:

Physical Abuse: The infliction of physical pain or bodily harm not limited to:

Assault/Battery
Constraint
Abduction

Sexual Abuse
Isolation
Abandonment

Common Charges: 240, 242, 243(d), 245, 368(b)(1), 368(b)(2), 368(b)(3), 368(c), 166(a)(4), 166(c)(1), 187, 206, 347, 261(a)(1), 289(a), 220, 243.4, 286, 288a

Neglect (by others): Refusal or failure to fulfill care taking obligations, such as abandonment or isolation, denial of food, shelter, clothing, medical assistance or personal needs, or the withholding of necessary medication or assertive devices. Neglect can be intentional or unintentional.

Common Charges: 368(b)(1), 368(b)(2), 368(b)(3), 368(c), 187, 192, 206

Financial (Material): The illegal or improper exploitation of funds or other resources (stealing or misusing possessions, property, or money).

Common Charges: 115, 182, 368(d), 368(e), 470, 484-487, 496

Psychological/Emotional Abuse: The infliction of mental anguish (threatening, humiliating, intimidating, isolating behaviors or statements).

Common Charges: 368(b)(1), 368(b)(2), 368(b)(3), 368(c)

Self-Neglect: The failure of an elder or dependent adult to adequately take care of themselves and meet the demands of daily living to eat, pay bills, meet personal hygiene needs and take medications.

Rev. 1/2011 W&I Code 15630(b)(1).

The identity of the individual who reported the abuse to law enforcement is to be kept confidential, even from the victim.

W&I Code 15633