



## 2014-2015 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

# PROTECTING OUR MOST VULNERABLE RESIDENTS

## Summary

The 2014-2015 Santa Clara County Civil Grand Jury (Grand Jury) received a complaint regarding the purported failure of law enforcement's use of California Penal Code Section 368 in reporting incidences of elder and/or dependent adult abuse, especially when the alleged abuse was mental or emotional. The complaint suggested that law enforcement agencies whose policies did not include a specific reference to Penal Code 368 were more likely to treat elder and/or dependent abuse as social service, not criminal, issues. Penal Code Section 368 identifies elders as those 65 and older and dependent adults as those 18 through 64, both of whom deserve special protection. The section then provides for criminal penalties for any person who causes or permits an elder or dependent adult to suffer unjustifiable pain or mental suffering. The complainant expressed particular concern that the isolation of elders and/or dependent adults from family and friends was not recognized as the infliction of mental suffering and, therefore, not subject to criminal prosecution.<sup>1</sup>

The Grand Jury investigated agencies in Santa Clara County (County) for the following:

- Do county law enforcement manuals contain the policies, rules, and procedures to be used by officers in the field specifically reference Penal Code Section 368 or sufficiently encompass its intent?
- Is there uniformity among County law enforcement agencies as to how to address elder and dependent adult abuse?
- Is the training that county law enforcement officers receive regarding elder and dependent adult abuse sufficient?
- Are there adequate avenues for reporting elder and/or dependent adult abuse so that the Office of the District Attorney (DA's Office) is able to prosecute appropriate cases?

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<sup>1</sup> For California State definitions of "abuse of an elder or dependent adult," "mental suffering," and "isolation," see Appendix A.

The Grand Jury reviewed the duty manuals of the eleven municipal County law enforcement agencies<sup>2</sup> and the County Sheriff's Office with respect to elder and/or dependent adult abuse. The Grand Jury also reviewed the Police Chiefs' Association<sup>3</sup> of Santa Clara County's County Elder and Dependent Adult Abuse Protocol (County Elder Abuse Protocol),<sup>4</sup> the training of County law enforcement personnel in elder and dependent adult abuse, and the reporting and investigation responsibilities of County agencies to receive and respond to reports of such abuse.

The Grand Jury found:

- With the exception of the duty manual of the San Jose Police Department (SJPD), the written policies of the other eleven county law enforcement agencies do, sufficiently encompass the intent of Penal Code Section 368.
- The Sheriff's Office Patrol Procedures are clearly written. They reference the County Elder Abuse Protocol, and Penal Code Section 368, and identify the reporting and investigation procedures.
- The County Elder Abuse Protocol has not been updated by the County's Police Chiefs' Association in nearly five years. The protocol is overly long, containing more than 100 pages, is inconsistent in its use of names for County agencies, and should be updated and revised.
- In order to provide uniformity throughout the County, the police departments of Los Altos, Milpitas, Morgan Hill, Mountain View, and San Jose duty manuals should reference the County Elder Abuse Protocol.
- There are sufficient avenues available for reporting elder and/or dependent adult abuse, so that the DA's Office is able to prosecute appropriate cases.

The DA's Office should recommend to the Police Chiefs' Association that it create a card informing elder and dependent abuse victims of the resources available to them.

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<sup>2</sup>The eleven municipalities are: Campbell, Gilroy, Los Altos, Los Gatos/Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, Santa Clara, San Jose, and Sunnyvale.

<sup>3</sup> Membership of the Police Chiefs' Association of Santa Clara County (SCCPOA) has varied over the years, but most recently includes the eleven municipal Police Departments (sic), the Santa Clara County Sheriff's Department, Santa Clara County District Attorney's Office, California Highway Patrol and San Jose State University Police Department.

<sup>4</sup> The title of the County Elder Abuse Protocol uses "Chief's" which is possessive singular. This document is consistently using "Chiefs'" which is the possessive plural in that the several Police Chiefs are of interest.

## Background

Population projections by the United States Census Bureau and the State of California Department of Finance Demographic Research Unit project a substantial increase in population of those 65 and older as baby boomers age.<sup>5</sup> As the elder population increases, it is reasonable to assume that abuse of elders will also increase. Therefore, the prohibitions and criminal penalties of California Penal Code Section 368 become increasingly important as a deterrent to elder and dependent adult abuse.<sup>6</sup>

### Provisions of Penal Code Section 368

In California, “elders” are defined as those 65 and older and “dependent adults” are defined as those from 18 to 64 who have physical or mental limitations.<sup>7</sup> The legislative intent in adopting criminal laws to specifically protect elders and dependent adults in Penal Code Section 368(a) states:

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, medically 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.<sup>8</sup>

In conformance with such intent, Penal Code Section 368(c) provides:

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.

Penal Code Section 368(b) reads similarly but applies to circumstances “likely to produce great bodily harm or death” and can result in a felony conviction.

Local law enforcement agencies have jurisdiction to investigate elder and dependent adult abuse, together with local adult protective agencies and local long-term care

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<sup>5</sup> <http://quickfacts.census.gov/qfd/states/06/06085.html>;  
<http://www.dof.ca.gov/research/demographic/reports/projections/P-1>.

<sup>6</sup> All references to code sections are to those of California.

<sup>7</sup> Penal Code §§ 368(f) and (g).

<sup>8</sup> Penal Code § 368(a).

ombudsman programs.<sup>9</sup> Law enforcement agencies, however, retain exclusive responsibility for criminal investigations.<sup>10</sup>

## **Training of Law Enforcement in Recognizing and Responding to Elder and/or Dependent Adult Abuse**

### **Mandatory Training**

The State, in Penal Code Section 13515(a), mandates the training of law enforcement personnel in elder and dependent adult abuse as follows:

Every city police officer or deputy sheriff at a supervisory level and below who is assigned field or investigative duties shall complete an elder and dependent adult abuse training course certified by the State Commission on Peace Officer Standards and Training within 18 months of assignment to field duties. Completion of the course may be satisfied by tele course, video training tape, or other instruction. The training shall, at a minimum include all of the following subjects:

- (1) Relevant laws.
- (2) Recognition of elder and dependent adult abuse.
- (3) Reporting requirements and procedures.
- (4) Neglect of elders and dependent adults.
- (5) Fraud of elders and dependent adults.
- (6) Physical abuse of elders and dependent adults.
- (7) Psychological abuse of elders and dependent adults.
- (8) The role of local adult protective services and public guardian offices.
- (9) The legal rights of, and remedies available to, victims of elder or dependent adult abuse . . . , including emergency protective orders and the option to request a simultaneous move-out order, and temporary restraining orders.<sup>11</sup>

Such training initially occurs at a police academy. Academies are either an adjunct of a specific police department or the Sheriff's Office, or are a part of the curriculum of an educational institution certified by the State Commission on Peace Officer Standards and Training (P.O.S.T.).<sup>12</sup>

### **Refresher Training**

There is no State requirement that peace officers receive on-going training regarding the recognition of elder and dependent adult abuse. The County Elder Abuse Protocol

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<sup>9</sup> Penal Code §368.5(a).

<sup>10</sup> Penal Code §368.5(b).

<sup>11</sup> Penal Code § 13515(a)

<sup>12</sup> Penal Code § 13510-13519.15

developed by the Police Chiefs' Association in 2010, however, recognizes that successfully addressing many of the crimes perpetrated against dependent adults and the elderly is complex and requires specialized intervention techniques. The protocol concludes "Like any profession, continuing education is critical for the development of expertise."<sup>13</sup>

In conformance with this philosophy the County Elder Abuse Protocol suggests that there should be on-going training in order to inform law enforcement officers of:

- The elder and dependent adult abuse laws;
- The law enforcement department's elder and dependent adult abuse policies and procedures;
- The signs and dynamics of elder and dependent adult abuses;
- Patrol officer investigative techniques;
- District Attorney elder and dependent adult abuse policies;
- The Adult Protective Services elder and dependent adult abuse policies; and
- The Public Guardian Office's elder and dependent adult abuse policies.<sup>14</sup>

Law enforcement departments are further advised in the County Elder Abuse Protocol that additional training should include written bulletins, videotapes, verbal reminders, and updates during patrol briefings.<sup>15</sup> The Chief of Police, the Sheriff or a designee in each jurisdiction is directed to ensure the review of the department's training policies annually and make any revisions deemed necessary.<sup>16</sup> It is beyond the purview of this investigation to determine whether such training takes place.

### **Avenues for Reporting Elder and/or Dependent Adult Abuse**

Anyone can report suspected elder or dependent adult abuse to authorities. Reports can be made to a law enforcement agency, Adult Protective Services (APS), or the Long-Term Care Ombudsman (County Ombudsman). In addition, any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult is a "mandated reporter" and must report suspected elder and/or dependent adult abuse to APS, the County Ombudsman, or local law enforcement.<sup>17</sup>

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<sup>13</sup> County Elder Abuse Protocol at 7.

<sup>14</sup> County Elder Abuse Protocol at 70.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Welfare and Institutions Code §15630(b)(1)(A)(i) and (ii). For a listing of mandated reporters, see Appendix B.

County law enforcement personnel are responsible for investigating suspected elder and/or dependent adult abuse. Even if an arrest is not made by a police officer or deputy sheriff, the responding officer is required to investigate and write a report. The reports are reviewed by supervisors, may be further investigated by detectives, and are forwarded to the DA's Office in appropriate cases. The reports may also be sent to APS or the County Ombudsman for further action depending upon whether the abuse occurred in an in-home situation or a long-term care facility.

Adult Protective Services is responsible for investigating complaints of abuse regarding independent elders, those living in in-home care situations, and those hospitalized. APS employees are mandatory reporters and must report to law enforcement incidences of physical abuse occurring in these environments. APS is staffed with 21 investigators, three social workers with master's degrees, and three supervisors. APS maintains an office in an SJPD facility which it staffs once a week to facilitate communication between the agencies.

The County Ombudsman serves as an advocate for residents in long term care facilities, including nursing homes, residential facilities for the elderly, and assisted living facilities. Catholic Charities fills the position of County Ombudsman under a contract with the State. It has three employees with master's degrees, one data entry person, and 47 volunteers. The staff receives an initial 36 hours of training and a ten hour internship. Thereafter, training occurs twice a year in two six-hour segments. Volunteers are assigned to specific care facilities and are responsible for visiting their assigned facilities once a week.

The DA's Office is charged with prosecuting cases of elder abuse and/or dependent adult abuse when warranted. The DA's Office may enhance any criminal charges where the victim is an elder or dependent adult with the penalties of Penal Code Section 368 even if it was not cited in the initial report. The DA's Office's data base does not track elder and dependent adult abuse; the number of cases involving elder victims is gleaned by searching by victim age.

## Methodology

During its investigation, the Grand Jury requested, received, and reviewed excerpts from the duty manuals of eleven municipal law enforcement agencies and the County Sheriff’s Office regarding the procedures used to identify and respond to elder and/or dependent adult abuse. It also reviewed the County Elder Abuse Protocol and other relevant documents.<sup>18</sup>

With respect to California statutes, the Grand Jury reviewed Penal Code Sections 368, 368.5, and 13515; Welfare and Institutions Code Sections 15610 through 15610.70, and 15630; and Probate Code Section 2351.

The Grand Jury also interviewed the complainant, representatives from law enforcement, members of the DA’s Office, and members of various social service agencies charged with responding to issues involving elder and dependent adult abuse.

## Discussion

### The Adequacy of Law Enforcement Duty Manuals in Addressing Elder and/or Dependent Adult Abuse

The Grand Jury requested, received, and reviewed the duty manuals of the County’s eleven municipal law enforcement agencies, as well as the Sheriff’s Office, regarding the procedures used to identify and respond to elder and/or dependent adult abuse.<sup>19</sup> There are three principal references regarding elder and dependent abuse: Penal Code Section 368, Lexipol Policy 326<sup>20</sup> and the County Elder Abuse Protocol. The following chart summarizes the references used in each duty manual reviewed:

<u>Law Enforcement Agency</u>	<u>References Penal Code Section 368</u>	<u>Utilizes Lexipol Policy 326</u>	<u>References the County Elder Abuse Protocol</u>
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

<sup>18</sup> For a complete list of relevant documents reviewed, see Appendix C.

<sup>19</sup> The cities of Saratoga, Cupertino, and Los Altos Hills are covered by the Sheriff’s Office and do not maintain their own police departments.

<sup>20</sup> Lexipol is a private company that prepares law enforcement policies

<u>Law Enforcement Agency</u>	<u>References Penal Code Section 368</u>	<u>Utilizes Lexipol Policy 326</u>	<u>References the County Elder Abuse Protocol</u>
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

### **Duty Manuals Referencing Penal Code Section 368**

As seen in the table above, only the Mountain View Police Department's and the Sheriff's duty manuals specifically reference Penal Code Section 368. With the exception of the San Jose Police Department manual, the other eleven County law enforcement agency policy manuals do address elder and dependent adult abuse and the intent, if not the language, of Penal Code Section 368.

### **Duty Manuals Utilizing Lexipol Policy 326**

Eight law enforcement agencies incorporate a version of Lexipol's Policy 326 in their duty manuals. The San Jose and Santa Clara police departments, Sunnyvale Department of Public Safety, and Sheriff do not. Lexipol is a private company that provides pre-written policies for law enforcement based on federal and state statutes, case law, and law enforcement best practices.<sup>21</sup> Law enforcement agencies pay for this service and can adapt the policy to the needs of an individual agency. Although Lexipol Policy 326 does not specifically reference Penal Code Section 368, it addresses its intent.

The duty manuals of the law enforcement agencies within the County that utilize Lexipol Policy 326 each expressly state that the purpose of the policy is to treat reports of elder and/or dependent adult abuse "as high priority criminal activity that is to be fully investigated," except for the Los Gatos/Monte Sereno Police Department manual which conforms with the County Elder Abuse Protocol. Additionally, the law enforcement manuals incorporating Lexipol Policy 326 each contain a section explaining the mandatory reporting requirements for suspected elder and/or dependent adult abuse, including physical abuse, abandonment, abduction, isolation, financial abuse, or neglect.<sup>22</sup> Lexipol Policy 326 also provides that the investigation supervisor is

<sup>21</sup> [www.lexipol.com/about-us](http://www.lexipol.com/about-us).

<sup>22</sup> Penal Code § 326.3.



responsible for ensuring that cases of suspected elder abuse are forwarded to the DA's Office, as well as other applicable agencies such as APS and the County Ombudsman.<sup>23</sup>

### **Duty Manuals Referencing the County Elder Abuse Protocol**

Most duty manuals of law enforcement agencies within the County refer to the County Elder Abuse Protocol, adopted by the Police Chiefs' Association in 2010. The Los Altos, Milpitas, Morgan Hill, Mountain View, and San Jose police departments do not. The Police Chiefs' Association's protocols are the result of collaborative efforts among all police chiefs in the County, the Sheriff's Office, and the District Attorney to coordinate law enforcement responses to potential criminal activity, including the abuse, neglect, and exploitation of elders and dependent adults.

The County Elder Abuse Protocol recognizes that differences in practices and policies by agencies can lead to "significant disparities in prevention, protection, reporting and service to victims."<sup>24</sup> Thus, conformity in practices and policies of law enforcement agencies throughout the County enhances the goal of reducing such disparities.

The County Elder Abuse Protocol cautions that, although law enforcement must refer all allegations of elder abuse to the appropriate agency, this does not relieve law enforcement's responsibility to also investigate the complaint to determine if criminal violations have occurred.<sup>25</sup> Moreover, a crime report must be written for suspected abuse, as well as unfounded/unsubstantiated abuse.<sup>26</sup> The protocol specifically references Penal Code Section 368 and reads:

Abuse of an elder or a dependent adult means either of the following:  
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 is necessary to avoid physical harm or mental suffering.<sup>27</sup>

The County Elder Abuse Protocol consists of more than 100 pages and does not lend itself to easy reference by law enforcement because of its length, its inconsistent use of the names for County agencies, and its failure to reference recent changes in the law. Although the signatory agencies committed themselves to an annual review of this protocol in 2010, to date, there have been no revisions and not all County law

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<sup>23</sup> Ibid.

<sup>24</sup> County Elder Abuse Protocol at 6

<sup>25</sup> Id. at 15.

<sup>26</sup> Id. at 25.

<sup>27</sup> Id. at 92.

enforcement agencies reference the County Elder Abuse Protocol. The Police Chiefs' Association should revise the protocol for the purpose of making it more succinct and user friendly. Local law enforcement manuals should reference the protocol.

### **The County Child Abuse Protocol Used by the San Jose Police Department**

The San Jose Police Department's duty manual refers neither to Penal Code Section 368 nor to the County Elder Abuse Protocol. Reference to elder abuse in its Table of Contents is under the heading "Juvenile Contacts"<sup>28</sup> and SJPD officers are directed to investigate "physical" incidents of elder abuse by using the County Child Abuse Protocol.<sup>29</sup> There is no mention of dependent adult abuse. Additionally, there is no direction as to the mandatory reporting requirements when addressing either elder and/or dependent adult abuse. These deficiencies should be corrected.

### **The Adequacy of Training for Law Enforcement Personnel in Elder and/or Dependent Adult Abuse**

When asked how the response to elder and dependent adult abuse can be improved, interviewees uniformly responded that periodic refresher training of law enforcement personnel would be helpful. Law enforcement personnel receive mandatory training in elder and dependent adult abuse at the academies, the content of which is governed by the State's Commission on P.O.S.T.

Recognizing that communities have different priorities with respect to addressing criminal activity in their neighborhoods, each law enforcement agency should also recognize that elder and dependent adult abuse most likely occurs within their jurisdiction. Thus, continuing education should be instituted ensuring that law enforcement personnel are adequately trained on an ongoing basis on how to respond to reports of elder and dependent adult abuse. It is beyond the scope of this report to identify law enforcement agencies that do so and those that do not.

Among those interviewed, some suggested tools for refresher training included:

- Provide an abbreviated version of the County's Elder Abuse Protocol,
- Text, email, or post updates regarding elder and dependent adult abuse laws,
- Provide a training course electronically that can be accessed by law enforcement personnel at their convenience, and

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<sup>28</sup> San Jose Police Department's Duty Manual at xv.

<sup>29</sup>Id. at 261.

- Utilize either APS investigators and/or the County Ombudsman to provide refresher training to law enforcement officers.

## **The Adequacy of Means of Reporting Elder and/or Dependent Adult Abuse**

Elders are especially vulnerable to crimes of abuse because of the social stigma often attached to reporting elder abuse, difficulties in expressing their concerns, financial dependence, embarrassment, and/or the fear of potential backlash from the perpetrator.<sup>30</sup> Dependent adults face similar and often different barriers. The County, however, has law enforcement agencies, APS, and the County Ombudsman in place to receive complaints of elder and dependent adult abuse, investigate such abuse, and pursue resolution of the abuse. Law enforcement personnel respond to reports of elder and dependent adult abuse. In 2014, APS received over 3,200 reports and the County Ombudsman approximately 15,000 reports of such abuse.<sup>31</sup>

The California Constitution confers certain enumerated rights to victims of crime.<sup>32</sup> In the course of its investigation, the Grand Jury was told that law enforcement personnel give a card to crime victims known as Marsy's card. The card details their rights as victims. The DA's Office should recommend to the Police Chiefs' Association that it create a similar card to be given to elders and/or dependent adults who reportedly were abused. The card should include phone numbers of County law enforcement agencies, APS, and the County Ombudsman as well as other agencies that may be of aid to the victim.

## **Conclusions**

The Grand Jury found that law enforcement and social service agencies are competent and committed to the protection of the elder and dependent adult population.

With respect to law enforcement duty manuals, only the San Jose Police Department duty manual does not refer to Penal Code Section 368 nor its substance. Additionally, it does not refer to the County Elder Abuse Protocol. Rather the San Jose Police Department's duty manual directs officers faced with incidences of reported elder and/or dependent adult abuse to adhere to the County Child Abuse Protocol.

The Santa Clara County Police Chiefs' Association has not updated the County Elder and Dependent Adult Abuse Protocol in nearly five years. The document, is overly long, and should be reviewed and revised.

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<sup>30</sup> A review of the literature suggests elder vulnerability is a combination of three factors: health status, cognitive ability, and social support. Elder vulnerability variables were identified and applied to data from the 2000 Health and Retirement Study. <http://ncsu.edu/ffci/publications/2008/v13-n1-2008-spring/Kim-Geistfeld.php>; <http://www.washingtonlawhelp.org/resource/protecting-elders-and-vulnerable-adults-from?ref=oPTo3>

<sup>31</sup> Law enforcement agencies, by and large, do not keep statistics as to reports of elder and/or dependent adult abuse.

<sup>32</sup> California Constitution, Article 1, Section 28(b).

In order to promote uniformity between all law enforcement agencies in Santa Clara County, the duty manuals of each county law enforcement agency should refer to the County Elder and Dependent Adult Abuse Protocol. The duty manuals of the law enforcement agencies of Los Altos, Milpitas, Morgan Hill, Mountain View, and San Jose do not refer to the protocol.

In order to best serve elders and dependent adults who may be victims of abuse, the County of Santa Clara; Social Services Agency; Adult Protective Services, and the Office of the District Attorney should collaborate on a document for law enforcement agencies to provide elder and dependent adult abuse victims advising them of available and applicable resources

## **Findings And Recommendations**

### **Finding 1**

The San Jose Police Department's duty manual refers to the County Child Abuse Protocol and not to the County Elder and Dependent Adult Abuse Protocol.

### **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 Los Altos Police Department's duty manual does not reference the Santa Clara County Elder and Dependent Adult Abuse Protocol.

### **Recommendation 2**

The Los Altos Police Department should revise its duty manual to reference the Santa Clara County Elder and Dependent Adult Abuse Protocol.

### **Finding 3**

The Milpitas Police Department's duty manual does not reference the Santa Clara County Elder and Dependent Adult Abuse Protocol.

### **Recommendation 3**

The Milpitas Police Department should revise its duty manual to reference the Santa Clara County Elder and Dependent Adult Abuse Protocol.

### **Finding 4**

The Morgan Hill Police Department's duty manual does not reference the Santa Clara County Elder and Dependent Adult Abuse Protocol.

### **Recommendation 4**

The Morgan Hill Police Department should revise its duty manual to reference the Santa Clara County Elder Abuse Protocol.

## **Finding 5**

The Mountain View Police Department's duty manual does not reference the Santa Clara County Elder and Dependent Adult Abuse Protocol.

### **Recommendation 5**

The Mountain View Police Department should revise its duty manual to reference the Santa Clara County Elder and Dependent Adult Abuse Protocol.

## **Finding 6**

The Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement, dated July 2010, has not been revised in five years, is over 100 pages long, and should be revised and shortened.

### **Recommendation 6A**

The City of Campbell Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

### **Recommendation 6B**

The City of Gilroy Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

### **Recommendation 6C**

The City of Los Altos Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

### **Recommendation 6D**

The Cities of Los Gatos / Monte Sereno Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

### **Recommendation 6E**

The City of Milpitas Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

**Recommendation 6F**

The City of Morgan Hill Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

**Recommendation 6G**

The City of Mountain View Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

**Recommendation 6H**

The City of Palo Alto Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

**Recommendation 6I**

The City of San Jose Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

**Recommendation 6J**

The City of Santa Clara Police Department, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

**Recommendation 6K**

The Office of the Sheriff of Santa Clara County, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

**Recommendation 6L**

The City of Sunnyvale Department of Public Safety, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

### **Recommendation 6M**

The County of Santa Clara Office of the District Attorney, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

### **Recommendation 6N**

The Santa Clara County Department of Correction, as a member of the Police Chiefs' Association of Santa Clara County, should advocate for revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement.

### **Finding 7**

There is no document to be given to elder and dependent adult abuse victims containing a list of available resources.

### **Recommendation 7**

The County, through County of Santa Clara; Social Services Agency; Adult Protective Services, and the County of Santa Clara Office of the District Attorney should collaborate on a document for law enforcement agencies to provide elder and dependent adult abuse victims advising them of available and applicable resources.



## APPENDIX A

“Abuse of an elder or a dependent adult” is defined as either of the following:

- (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering.
- (b) The deprivation by a care custodian of goods or services that is necessary to avoid physical harm or mental suffering.<sup>33</sup>

“Mental suffering” is defined as:

[F]ear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult.<sup>34</sup>

“Isolation” is defined as:

- (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 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.<sup>35</sup>

A rebuttable presumption exists, however, that isolation is not to be found if such acts are “in response to a reasonably perceived threat or danger to property or physical safety.”<sup>36</sup> Thus, court ordered conservatorships or restraining orders prohibiting contact with named persons take precedence and challenging such authority is a civil matter, rather than a criminal matter.

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<sup>33</sup> Welfare and Institutions Code § 15610.07.

<sup>34</sup> Welfare and Institutions Code § 15610.53.

<sup>35</sup> Welfare and Institutions Code §§ 15610.43(a)(1) and (2).

<sup>36</sup> Welfare and Institutions Code § 15610.43(c).

## **APPENDIX B**

Welfare and Institutions Code 15630(a) provides that any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult is a “mandated reporter”—a term that includes:

- Administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults
- Any elder or dependent adult care custodian
- Health practitioners
- Clergy members
- Employees of a county adult protective services agency
- Local law enforcement agencies

## **APPENDIX C**

### Documents Reviewed

The items in this appendix were requested by the Grand Jury, provided to the Grand Jury by interviewees, found among public media materials, located through internet searches, or any combination thereof. Some of these items are not available to the public.

The following sources were reviewed in preparing this report:

#### **Documents**

- The Adult Protective Services FY 15 Budget Revenue Sources
- The Adult Protective Services 2013 Annual Report
- California Legislative Information: Assembly Bill No. 2034; An Act to Add Section 236 to the Probate Code, and to Add Section 15657.035 to the Welfare and Institutions Code, Relating to Elders and Dependent Adults: Assembly Bill #2034
- California Legislative Information: Assembly Bill No. 2171; An Act to Amend Section 1569.886 of to Add Article 2.5 (commencing with section 1569.261) to Chapter 3.2 of Division 2 of the Health and Welfare Code, relating to care facilities: Assembly Bill # 2171
- California Legislative Information: Assembly Bill 937; Chapter 127; An Act to Amend Section 2351 of the Probate Code, Relating to Conservators and Guardians: Assembly Bill #937, Chapter 127
- California Legislative Information: Assembly Bill No.40; Chapter 659; Elder and Dependent Adult Abuse; Reporting (9/27/2012)
- California Penal Code: Section 368
- Santa Clara County Police Chiefs' Association: Child Abuse Protocol for Santa Clara County Law Enforcement (June 2008)
- Santa Clara County Police Chiefs' Association: Elder and Dependent Adult Abuse Protocol
- Santa Clara County Police Chiefs' Association: Domestic Violence Protocol for Law Enforcement (2/10/2011)
- Police Chiefs' Association of Santa Clara County: Domestic Violence Protocol for Law Enforcement; 2014; Adopted 03/2014

- Elder Abuse/Bill Text – AB40 Elder and Adult Abuse reporting
- Family Violence Protocol: Integrated Training for Law Enforcement, Social Services, and Advocates (Module 5: elder and neglect)
- Lexipol: Law Enforcement, Fire, Custody (1998-2014)<sup>37</sup>
- The California Department of Aging: Long-Term Care Ombudsman Program (03/28/2012)
- The State of California Department of Justice Office of the Attorney General: Elder Abuse Laws (Criminal) (Kamala Harris)
- County of Santa Clara Office of the Sheriff:
  - Patrol Procedures (7/10/2014)
  - Elder and Dependent Adult Abuse Training Standards and Enforcement Protocol (M. Cuevas) rev. 2014
- California Penal Code: Section 368-368.5
- California Penal Code Sections:
  - Title 9 Part 1. Of Crimes and Punishments, Of Crimes Against Elders, Dependent Adults, and Persons with Disabilities
  - Section 15657.8: Elder Abuse and Dependent Adult Civil Protection Act, Article 9
- California Probate Code: Division 2, General Provisions, Part 19: Conveyance or Transfer of Property Claimed to belong to Decedent or Other Person
- State and County Population Projections by Major Age Group: 2010-2060 (California Department of Finance, Demographic Research Unit; <http://www.dof.ca.gov/research/demographic/reports/projections/P-1/>)
- The State of California Department of Justice Office of the Attorney General: Victims Bill of Rights Act of 2008- Marsy's Rights (10/21//2014)
- California Welfare and Institutions Code:
  - Section 4231.5
  - Sections 15610-15610.70
  - Section 15630 and 15630.1
  - Sections 15633 and 15634

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<sup>37</sup> <http://www.lexipol.com/>

- Sections 15763

## **Policies**

- Santa Clara County; Social Services Agency; Department of Aging & Adult Services; Adult Protective Services Handbook
- Police Chiefs' Association of Santa Clara County: Domestic Violence Protocol for Law Enforcement 2011; (02/10/2011)
- The Campbell Police Department's Law Enforcement Services Manual: Policy 326, Adult Abuse, 1995-2014
- The Gilroy Police Department's Policy Manual:
  - Adult Abuse: Policy 326 (07/28/2014)
  - Child Abuse: Policy 330 (07/28/2014)
- The Los Altos Police Department's Policy Manual:
  - Policy 208 Training Policy (08/01/2014)
  - Policy 326 Adult Abuse (08/26/2013)
- The Los Altos Police Department's Training Plan
- The Los Gatos/Monte Sereno Police Department's:
  - Policy 326 Elder Abuse
  - Policy Manual August 2014
- Merced County Human Services Agency: Family Violence Protocol, Integrated Training for Law Enforcement, Social Services and Advocates, "Elder & Neglect" (03/16/2007)
- The Milpitas Police Department's
  - Policy 326: Adult Abuse (08/28/2014)
  - Policy 330: Child Abuse
- The Morgan Hill Police Department:
  - Field Training Manual: Elder and Adult Abuse (8/19/2014)
  - Training Plan and Policy (2012)
- The Mountain View Police Department:
  - Elder Abuse; Policy 326
  - Child Abuse Reporting; Policy 330
  - Field Training Manual (06/2008)
  - Policy Manual (05/01/2013)
  - Trainee Rook Book (06/2014)

- The Palo Alto Police Department's Policy Manual: Adult Abuse Policy 326 (09/04/2013)
- The San Jose Police Department's:
  - Duty Manual—Policies, Roles, Procedures (2013)
  - Elder/Dependent Adult Abuse Committee, Procedure Review (10/01/2014)
- The Santa Clara County Adult Protective Services Policy: Steps to Report Dependent Adult or Elder Abuse to Adult Protective Services (rev. 2014)
- The Santa Clara County Office of the Sheriff's Policy: Elder and Dependent Adult Abuse Training Standards and Enforcement Protocol
- The Santa Clara County Office of the Sheriff; Procedure Review
- The Santa Clara Police Department's:
  - General Order 42.1: Criminal Investigation: Organization and Administration (4/2006)
  - General Order 91.2: Reporting of Dependent or Elder Abuse (4/2006)
- The Sunnyvale Public Safety Department's Policy: Elder and Adult Abuse Committee; Procedure Review

## **Articles**

- U.S. Administration for Community Living; Press Release (6/14/2013)
- Adult Protective Services Presentation Report
- Adult Protective Services Training Report
- Adult Protective Services, Santa Clara County, Financial Abuse Specialist Team (F.A.S.T.) (09/25/2014)
- Coalitions by State—Center of Excellence on Elder Abuse Neglect
- Elder Abuse Investigation (Richard Calhoun)
- Elder and Dependent Adult Abuse (1/2011)
- Financial Abuse Specialist Team Practice Guide, Santa Clara County 1.0 (9/25/2014)
- History and Role of the Long Term Care Ombudsman Program (9/2008)

- Lack of Oversight Puts In-Home Clients at Risk: San Jose Mercury (1/10/2015)
- Local Family Justice Centers Offer Help to Domestic Violence Victims (Andie Waterman) (09/17/2014)
- The PPJ Gazette: Guardianship Abuse: Testimony for the Senate Judiciary Committee (09/28/2011)
- Relevant Statutes re: California Welfare and Institutions Code (section 15610.70): Undue Influence: Schwartz and Schwartz (8/11/2014)
- Reporting Elder Abuse: San Jose Police Department (2014)
- Shouse California Law Group: California Elder Abuse Laws; Penal Code 368pc
- Welcome to NASGA: Guardianship/Conservatorship Can be Bad for Your Health and Wealth (9/10/2014)
- What is Elder/Dependent Adult Abuse?

#### **Memoranda/Miscellaneous/Media**

- United States Department of Health and Human Services, Administration for Community Living, US Department of Health and Human Services, Press Release (06/25/2014)

This report was PASSED and ADOPTED with a concurrence of at least 12 grand jurors on this 3rd day of June, 2015.

Elaine K. Larson  
Elaine K. Larson  
Foreperson

Wilma Faye Underwood  
Wilma Faye Underwood  
Foreperson pro tem

Joe A. Lopez  
Joe A. Lopez  
Secretary

James L. Cunningham, Jr.  
James L. Cunningham, Jr.  
Secretary pro tem