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OCT 28 2015



CITY OF MORGAN HILL

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY BRITNEY HOELBIG DEPUTY

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October 28, 2015

Honorable Rise Jones Pichon, Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

**Re: RESPONSE TO SANTA CLARA COUNTY GRAND JURY REPORT,
"PROTECTING OUR MOST VULNERABLE RESIDENTS"**

Dear Judge Pichon:

On behalf of the City of Morgan Hill, I would like to apologize for our delay in providing the City's official response to the Santa Clara County Grand Jury's 2014-2015 Final Report entitled "Protecting Our Most Vulnerable Residents". The City of Morgan Hill hereby responds to the applicable findings and recommendations as required by California Penal Code Section 933.05(a) and 933.05(b), as directed by City Council on July 8, 2015.

The City of Morgan Hill agrees with Grand Jury Findings 4 and 6(f).

- ❖ **Recommendation 4:** Indicated that the Morgan Hill Police Department should revise its duty manual to reference the Santa Clara County Elder Abuse Protocol.
 - The Morgan Hill Police Department agrees with Finding 4 as well as with Recommendation 4; we agree to make the changes and make reference to the Santa Clara County Elder Abuse and Dependent Adult Abuse Protocol in our Lexipol Duty Manual.

- ❖ **Recommendation 6(f):** Encourages that as members of the Police Chiefs' Association of Santa Clara County, The Morgan Hill Police Department, should advocate for revision of the Santa Clara County Elder Abuse and Dependent Adult Abuse Protocol.
 - The Morgan Hill Police Department agrees with Finding 6(f) as well as with Recommendation 6(f). We are currently working with the Santa Clara County District Attorney's and we have assigned our Person Crimes Detective to assist outside agencies with the appropriate revisions of the Elder Abuse and Dependent Adult Abuse Protocol.

Please contact me with any questions regarding this Grand Jury response.

Sincerely,

A handwritten signature in blue ink, appearing to read "SRymer", with a long horizontal flourish extending to the right.

Steve Rymer
City Manager

Enclosures: City Council Staff Report
Grand Jury Report

cc w/enclosures: Renee Gurza, City Attorney

CITY COUNCIL STAFF REPORT

MEETING DATE: *JULY 8, 2015*

PREPARED BY: Ray Ramos, Administrative Sergeant/Police Department

APPROVED BY: City Manager

..TITLE

**RESPONSE TO THE SANTA CLARA COUNTY CIVIL GRAND JURY REPORT:
"PROTECTING OUR MOST VOLNERABLE REDISENTS"**

..END

RECOMMENDATION(S)

..RECOMMENDATION

Direct Staff to provide the responses described below to the 2014-2015 Santa Clara County Civil Grand Jury Report.

..BODY

COUNCIL PRIORITIES, GOALS & STRATEGIES:

Ongoing Priorities

Enhancing public safety
Fostering a positive organizational culture
Preserving and cultivating public trust

2015 Focus Areas

Participate in Regional Issues
General Plan Update
Community Engagement Effectiveness

REPORT NARRATIVE:

On June 15, 2015, The Santa Clara County Civil Grand Jury issued the attached report entitled "PROTECTING OUR MOST VOLNERABLE REDISENTS." The report is a summary as a result of a complaint the Civil Grand Jury received regarding the purported failure of law enforcement's use of California Penal Code Section 368; in reporting incidents of elder abuse and/or dependent adult abuse, especially when the alleged abuse was mental or emotional. The Civil Grand Jury investigated agencies in Santa Clara County for the following:

1. Do county law enforcement manuals contain the policies, rules and procedures to be used by officers in the field specifically Penal Code Section 368 or sufficiently encompass its intent?
2. Is there uniformity among County law enforcement agencies as to how to address elder and dependent adult abuse?
3. Is the training that county law enforcement officers receive regarding elder and dependent adult abuse sufficient?
4. 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?

As part of their report the Civil Grand Jury issues “findings,” The City is then required to respond to the findings and agree or disagree with them pursuant to California Penal Code Section 933.05. Staff recommends that the City agree with Civil Grand Jury Findings 4 and 6.

Finding 4 states that the Morgan Hill Police Department’s duty manual does not reference the Santa Clara County Elder Abuse and Dependent Adult Abuse Protocol.

Finding 6 indicates that the Santa Clara County Elder Abuse and Dependent Adult Abuse Protocol is dated July 2010, it has not been revised in five (5) years, the protocol is over one hundred pages (100) and should be revised and shortened.

The City is required to respond to each Civil Grand Jury “recommendation” by selecting from one of four responses pursuant to Penal Code Section 933.05. Staff recommends that the City respond by implementing “Recommendations numbered 4 and 6(f).”

Recommendation 4: Indicated that the Morgan Hill Police Department should revise its duty manual to reference the Santa Clara County Elder Abuse Protocol.

The Morgan Hill Police Department agrees with **Finding 4** as well as with **Recommendation 4**; we agree to make the changes and make reference to the Santa Clara County Elder Abuse and Dependent Adult Abuse Protocol in our Morgan Hill Policy Manual.

Recommendation 6(f): Encourages that as members of the Police Chiefs’ Association of Santa Clara, The Morgan Hill Police Department, should advocate for revision of the Santa Clara County Elder Abuse and Dependent Adult Abuse Protocol.

The Morgan Hill Police Department agrees with **Finding 6** as well as with **Recommendation 6(f)**. We are currently working with the Santa Clara County District Attorney’s and we have assigned Detective Sheena Pevehouse to assist outside agencies with the appropriate revisions of the Elder Abuse and Dependent Adult Abuse Protocol.

COMMUNITY ENGAGEMENT: Inform

ALTERNATIVE ACTIONS:

Per, California Penal Code Sections 933.05(a) & (b), as a governing body of a public agency or department, which has been the subject of a Grand Jury final report, we are required to respond within 60 days to the Presiding Judge of the Superior Court on the **findings** and **recommendations** pertaining to the matter under the control of the governing body. Furthermore, our responses to the Honorable Rise Jones Pichon are due no later than Monday, August 17, 2015.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No previous actions have been taken on this matter by Council.

FISCAL AND RESOURCE IMPACT:

No fiscal impact

CEQA (California Environmental Quality Act):
Not a Project

LINKS/ATTACHMENTS:

Morgan Hill Police Department Policy #326 – Adult Abuse
2014-2015 Civil Grand Jury Report for Santa Clara County
City Manager’s Response Letter to the Honorable Pichon

Adult Abuse

326.1 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 for Morgan Hill Police Department members as required by law.

326.1.1 DEFINITIONS

Definitions related to this policy include:

Adult abuse - Any offense or attempted offense involving violence or neglect of an adult victim when committed by a person responsible for the adult's care, or any other act that would mandate reporting or notification to a social service agency or law enforcement.

326.2 DEFINITIONS

Definitions related to this policy include:

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 victim committed by a caregiver. This also includes any other act that would mandate notification to a social service/licensing agency or law enforcement related to the abuse of an adult (Welfare and Institutions Code § 15610.07; Welfare and Institutions Code § 15610.27; Welfare and Institutions Code § 15610.23).

Dependent Adult - Any person residing in this state, between 18 and 64 years of age, who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/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 (Health and Safety Code § 1250; Health and Safety Code § 1250.2; Health and Safety Code § 1250.3).

326.3 MANDATORY NOTIFICATION

Any member 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/she has experienced abuse or who reasonably suspects abuse, shall report to the county adult protective services agency as soon as practicable as provided in Welfare and Institutions Code § 15630.

For purposes of notification, abuse is physical abuse, abandonment, abduction, isolation, financial abuse or neglect. Physical abuse includes any assault or sex crime (Welfare and Institutions Code § 15610.63). Financial abuse includes taking personal or real property by undue influence or intent to defraud (Welfare and Institutions Code § 15610.30). Notification is also made in cases of abandonment, abduction, isolation and neglect (Welfare and Institutions Code § 15610.05;

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Welfare and Institutions Code § 15610.06; Welfare and Institutions Code § 15610.43; Welfare and Institutions Code § 15610.57).

Notification should also be made to the following agencies as soon as practicable or as provided below (Welfare and Institutions Code § 15630):

- (a) If the abuse is physical abuse and occurred in a long-term care facility (not a state mental health hospital or a state developmental center) notification shall be made as follows (Welfare and Institutions Code § 15630(b)(1)):
 1. If there is serious bodily injury, notification shall be made by telephone and, within two hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
 2. If there is physical abuse and no serious bodily injury, notification shall be made by telephone and, within 24 hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
 3. If the abuse is allegedly caused by a resident with dementia and there is no serious bodily injury, notification shall be made by telephone and a written report to the local ombudsman within 24 hours.
- (b) If the abuse is in a long-term care facility (not a state mental health or a state developmental center) and is other than physical abuse, a telephone report and a written report shall be made to the local ombudsman.
- (c) The State Department of Public Health shall be notified of all known or suspected abuse occurring in a long-term facility.
- (d) The Bureau of Medi-Cal Fraud and Elder Abuse shall be notified of all abuse that constitutes criminal activity in a long-term care facility.
- (e) The District Attorney's office shall be notified of all cases of physical abuse and financial abuse in a long-term care facility.
- (f) If the abuse occurred at a state mental hospital or a state developmental center, notification shall be made to the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services as soon as practicable but no later than two hours after law enforcement becomes aware of the abuse.
- (g) If the abuse occurred at a residential care facility for the elderly or adult day program, the State Department of Social Services shall be notified.
- (h) If the abuse occurred in an adult day health care center, the State Department of Public Health and the California Department of Aging shall be notified.

Failure to make a report within two working days or as provided is a misdemeanor (Welfare and Institutions Code § 15630(h)).

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The Special Operations Division 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 (e.g., care facility, hospital) per Welfare and Institutions Code § 15630(b).

326.3.1 RECORDS BUREAU RESPONSIBILITY

The Records Bureau is responsible for the following:

- (a) Provide a copy of the elder/dependent abuse report to Adult Protective Services. This requirement is applicable even if the initial call was received from Adult Protective Services.
- (b) Retain the original elder/dependent abuse report with the initial case file.

326.4 OFFICER'S RESPONSE

All incidents involving actual or suspected adult abuse shall be fully investigated and appropriately documented. When investigating such incidents, Officers shall also adhere to the Santa Clara County Elder Abuse and Dependent Adult Protocol :

326.4.1 INITIAL RESPONSE

Officers may be called upon to effect a forced entry as the first responder to the scene of suspected adult abuse. Entry should be immediate when it appears reasonably necessary to protect life or property. When the need for an emergency entry is not evident, officers should seek supervisory approval. Officers must be prepared to provide emergency care pending the arrival of medical personnel, if not already present.

326.4.2 STABILIZE THE SITUATION

Officers must quickly assess the situation in an effort to ensure the immediate safety of all persons. Officers shall also consider taking the following actions:

- (a) Attempt to identify the victim, suspect and witnesses as well as the roles and relationships of all parties. Parties should be interviewed separately when possible.
- (b) Preserve the crime scene where evidence may be present. All persons should be removed from the scene until it has been photographed and processed. Any evidence that may change in appearance (e.g., injuries) should be photographed as soon as practicable.
- (c) Assess and define the nature of the problem. Officers should assess the available information to determine the type of abuse that may have taken place or the potential for abuse in the future that may be eliminated by intervention.
- (d) Make on-scene arrests when appropriate. Officers may arrest a person without a warrant when probable cause exists to believe that the person has committed an assault or battery, whether or not the assault or battery has in fact been committed, upon an adult to whom the suspect is related by blood or legal guardianship, provided the arrest is made at the time probable cause arises (Penal Code § 836).

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If an arrest is not otherwise required by law, officers should consider the consequences that the immediate arrest of a sole supporting family caretaker might have on the victim. The decision to arrest should be based on the best interests and caretaking needs of the elderly or dependent adult victim. The present and future safety of the victim is of utmost importance.

326.4.3 SUPPORT PERSONNEL

The following persons should be considered for notification if it appears an in-depth investigation is appropriate:

- Patrol supervisor
- Detective personnel
- Evidence collection personnel
- Protective Services Agency personnel
- Ombudsman shall be called if the abuse is in a long-term care facility, to coordinate efforts to provide the most immediate and appropriate response (Welfare and Institutions Code § 15630(b)).
- Investigation efforts shall be coordinated with the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services if the abuse occurred in a state mental hospital or state developmental center (Welfare and Institutions Code § 15630(b)).

326.4.4 EMERGENCY PROTECTIVE ORDERS

In any situation which an officer reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse (other than financial abuse alone), the officer may seek an emergency protective order against the person alleged to have committed or threatened such abuse (Family Code § 6250(d)).

326.5 POLICY

The Morgan Hill Police Department will investigate all reported incidents of alleged adult abuse and ensure proper reporting and notification as required by law.

326.6 INVESTIGATIONS AND REPORTING

All reported or suspected cases of adult abuse require investigation and a report, even if the allegations appear unfounded or unsubstantiated.

Investigations and reports related to suspected cases of adult abuse should address, as applicable:

- (a) The overall basis for the contact. This should be done by the investigating officer in all circumstances where a suspected adult abuse victim is contacted.

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- (b) Any relevant statements the victim may have made and to whom he/she made the statements.
- (c) If a person is taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
- (d) Documentation of any visible injuries or any injuries identified by the victim. This should include photographs of such injuries, if practicable.
- (e) Whether the victim was transported for medical treatment or a medical examination.
- (f) Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other potential victims or witnesses who may reside in the residence.
- (g) Identification of any prior related reports or allegations of abuse, including other jurisdictions, as reasonably known.
- (h) Previous addresses of the victim and suspect.
- (i) Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.
- (j) Results of investigations shall be provided to those agencies (APS, long-term ombudsman) that referred or reported the adult abuse (Welfare and Institutions Code § 15640(f)).

Any unexplained death of an adult who was in the care of a guardian or caretaker should be considered as potential adult abuse and investigated similarly.

326.7 QUALIFIED INVESTIGATORS

Qualified investigators should be available to investigate cases of adult abuse. These investigators should:

- (a) Conduct interviews in appropriate interview facilities.
- (b) Be familiar with forensic interview techniques specific to adult abuse investigations.
- (c) Present all cases of alleged adult abuse to the prosecutor for review.
- (d) Coordinate with other enforcement agencies, social service agencies and facility administrators as needed.
- (e) Provide referrals to therapy services, victim advocates, guardians and support for the victim and family as appropriate.
- (f) Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 15610.55).

326.8 MANDATORY NOTIFICATION

Members of the Morgan Hill Police Department shall notify the local office of the California Department of Social Services (CDSS) Adult Protective Services (APS) agency when they reasonably suspect, have observed or have knowledge of an incident that reasonably appears to be abuse of an elder (age 65 or older) or dependent adult, or are told by an elder or dependent adult that he/she has experienced abuse (Welfare and Institutions Code § 15630(b)).

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Notification shall be made by telephone as soon as practicable and a written report shall be provided within two working days as provided in Welfare and Institutions Code § 15630(b)(c)).

A dependent adult is an individual, between 18 and 64 years of age, who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/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 also includes those admitted as inpatients to a 24-hour health facility, as defined in state law (Welfare and Institutions Code § 15610.23).

For purposes of notification, abuse is physical abuse, abandonment, abduction, isolation, financial abuse or neglect. Physical abuse includes any assault or sex crime (Welfare and Institutions Code § 15610.63). Financial abuse includes taking personal or real property by undue influence or intent to defraud (Welfare and Institutions Code § 15610.30).

Notification shall also be made to the following agencies as soon as practicable or as provided below (Welfare and Institutions Code § 15630):

- (a) If the abuse is physical abuse and occurred in a long-term care facility (not a state mental health hospital or a state developmental center) notification shall be made as follows (Welfare and Institutions Code § 15630(b)(1)):
 1. If there is serious bodily injury, notification shall be made by telephone and, within two hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
 2. If there is physical abuse and no serious bodily injury, notification shall be made by telephone and, within 24 hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
 3. If the abuse is allegedly caused by a resident with dementia and there is no serious bodily injury, notification shall be made by telephone and a written report to the local ombudsman within 24 hours.
 4. When a report of abuse is received by the Department, local ombudsman shall be called to coordinate efforts to provide the most immediate and appropriate response (Welfare and Institutions Code § 15630(b)).
- (b) If the abuse is in a long-term care facility (not a state mental health or a state developmental center) and is other than physical abuse, a telephone report and a written report shall be made to the local ombudsman as soon as practicable (Welfare and Institutions Code § 15630(b)).
- (c) The California Department of Public Health (DPH) shall be notified of all known or suspected abuse in a long-term care facility.
- (d) The SDSS shall be notified of all known or suspected abuse occurring in a residential care facility for the elderly or in an adult day program.
- (e) If the abuse occurred in an adult day health care center, DPH and the California Department of Aging shall be notified.

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- (f) The Bureau of Medi-Cal Fraud and Elder Abuse shall be notified of all abuse that constitutes criminal activity in a long-term care facility.
- (g) The District Attorney's office shall be notified of all cases of physical abuse and financial abuse in a long-term care facility.
- (h) If the abuse occurred at a state mental hospital or a state developmental center, notification shall be made to the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services as soon as practicable but no later than two hours after law enforcement becomes aware of the abuse (Welfare and Institutions Code § 15630(b)).
 - 1. When a report of abuse is received by the Department, Investigation efforts shall be coordinated with the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services (Welfare and Institutions Code § 15630(b)).
- (i) If during an investigation it is determined that the adult abuse is being committed by a licensed health practitioner as identified in Welfare and Institutions Code 15640(b), the appropriate licensing agency shall be immediately notified (Welfare and Institutions Code 15640(b)).
- (j) When the Department receives a report of abuse, neglect or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, the licensing agency shall be notified by telephone as soon as practicable (Welfare and Institutions Code § 15640(e)).

The Special Operations Division 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 (e.g., care facility, hospital) per Welfare and Institutions Code § 15630(b).

326.8.1 NOTIFICATION PROCEDURE

Notification should include the following information, if known (Welfare and Institutions Code § 15630(e)):

- (a) The name of the person making the report.
- (b) The name and age of the elder or dependent adult.
- (c) The present location of the elder or dependent adult.
- (d) The names and addresses of family members or any other adult responsible for the care of the elder or dependent adult.
- (e) The nature and extent of the condition of the elder or dependent adult.
- (f) The date of incident.
- (g) Any other information, including information that led the person to suspect elder or dependent adult abuse.

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326.9 PROTECTIVE CUSTODY

Before taking an adult abuse victim into protective custody when facts indicate the adult may not be able to care for him/herself, the officer should make reasonable attempts to contact APS. Generally, removal of an adult abuse victim from his/her family, guardian or other responsible adult should be left to the welfare authorities when they are present or have become involved in an investigation.

Generally, members of this department should remove an adult abuse victim from his/her family or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the victim. Prior to taking an adult abuse victim into protective custody, the officer should take reasonable steps to deliver the adult to another qualified legal guardian, unless it reasonably appears that the release would endanger the victim or result in abduction. If this is not a reasonable option, the officer shall ensure that the adult is delivered to APS.

Whenever practicable, the officer should inform a supervisor of the circumstances prior to taking an adult abuse victim into protective custody. If prior notification is not practicable, officers should contact a supervisor promptly after taking the adult into protective custody.

When adult abuse victims are under state control, have a state-appointed guardian or there are other legal holdings for guardianship, it may be necessary or reasonable to seek a court order on behalf of the adult victim to either remove the adult from a dangerous environment (protective custody) or restrain a person from contact with the adult.

326.9.1 EMERGENCY PROTECTIVE ORDERS

In any situation which an officer reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse (other than financial abuse alone), the officer may seek an emergency protective order against the person alleged to have committed or threatened such abuse (Family Code § 6250(d)).

326.10 INTERVIEWS

326.10.1 PRELIMINARY INTERVIEWS

Absent extenuating circumstances or impracticality, officers should audio record the preliminary interview with a suspected adult abuse victim. Officers should avoid multiple interviews with the victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating officers should defer interviews until a person who is specially trained in such interviews is available.

326.10.2 DETAINING VICTIMS FOR INTERVIEWS

An officer should not detain an adult involuntarily who is suspected of being a victim of abuse solely for the purpose of an interview or physical exam without his/her consent or the consent of a guardian unless one of the following applies:

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- (a) Exigent circumstances exist, such as:
 - 1. A reasonable belief that medical issues of the adult need to be addressed immediately.
 - 2. A reasonable belief that the adult is or will be in danger of harm if the interview or physical exam is not immediately completed.
 - 3. The alleged offender is a family member or guardian and there is reason to believe the adult may be in continued danger.
- (b) A court order or warrant has been issued.

326.11 MEDICAL EXAMINATIONS

When an adult abuse investigation requires a medical examination, the investigating officer should obtain consent for such examination from the victim, guardian, agency or entity having legal custody of the adult. The officer should also arrange for the adult's transportation to the appropriate medical facility.

In cases where the alleged offender is a family member, guardian, agency or entity having legal custody and is refusing to give consent for the medical examination, officers should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for officers to take the adult for a medical examination, the supervisor should consider other government agencies or services that may obtain a court order for such an examination.

326.12 DRUG-ENDANGERED VICTIMS

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of an adult abuse victim who has been exposed to the manufacturing, trafficking or use of narcotics.

326.12.1 SUPERVISOR RESPONSIBILITIES

The Special Operations Division supervisor should:

- (a) Work with professionals from the appropriate agencies, including APS, other law enforcement agencies, medical service providers and local prosecutors, to develop community specific procedures for responding to situations where there are adult abuse victims endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
- (b) Activate any available interagency response when an officer notifies the Special Operations Division supervisor that he/she has responded to a drug lab or other narcotics crime scene where an adult abuse victim is present or where evidence indicates that an adult abuse victim lives.
- (c) Develop a report format or checklist for use when officers respond to drug labs or other narcotics crime scenes. The checklist will help officers document the environmental, medical, social and other conditions that may affect the adult.

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326.12.2 OFFICER RESPONSIBILITIES

Officers responding to a drug lab or other narcotics crime scene where an adult abuse victim is present or where there is evidence that an adult abuse victim lives should:

- (a) Document the environmental, medical, social and other conditions of the adult, using photography as appropriate and the checklist or form developed for this purpose.
- (b) Notify the Special Operations Division supervisor so an interagency response can begin.

326.13 STATE MANDATES AND OTHER RELEVANT LAWS

California requires or permits the following:

326.13.1 RECORDS BUREAU RESPONSIBILITIES

The Records Bureau 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.

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
AUTHORIZING THE CITY MANAGER TO SIGN THE RESPONSE TO THE SANTA
CLARA COUNTY CIVIL GRAND JURY REGARDING LAW ENFORCEMENT'S
REPORTING OF INCIDENTS OF ELDER/DEPENDENT ADULT ABUSE**

WHEREAS, on June 15, 2015, the Santa Clara County Civil Grand Jury ("Grand Jury") issued a report entitled "Protecting Our Most Vulnerable Residents" ("Report") to Santa Clara County police agencies including the Morgan Hill Police Department; and

WHEREAS, the Report contains the Grand Jury's review and evaluation of law enforcement's reporting of incidents of elder/dependent adult abuse; and

WHEREAS, the recommendations in the Report are that the Morgan Hill Police Department revise its Duty Manual to reference the Santa Clara County Elder and Dependent Abuse Protocol and to advocate for the revision of the Elder and Dependent Adult Abuse Protocol for Santa Clara County Law Enforcement; and

WHEREAS, the Police Department agrees with the Grand Jury's recommendations; and

WHEREAS, Penal Code Section 933.05(a) and (b) requires a written response on the findings and recommendations from each law enforcement agency in the County; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, further reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Response to the Santa Clara County Civil Grand Jury Report: "Protecting Our Most Vulnerable Residents" submitted for City Council consideration at its meeting of July 8, 2015, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL
DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:**

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct that:

- a. That the response to the Grand Jury in the form of the letter attached hereto as Exhibit A and incorporated herein by this reference (the "Response Letter") is hereby approved.

- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute the Response Letter substantially in the form attached hereto as Exhibit A.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 8th day of July, 2015 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No. XXXX , adopted by the City Council at the meeting held on July 8 , 2015.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, CITY CLERK



2014-2015 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

(ENDORSED)
FILED
JUN -8 2015

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
By BRITNEY HUELBIG Deputy

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.¹

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?

¹ 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 agencies² and the County Sheriff's Office with respect to elder and/or dependent adult abuse. The Grand Jury also reviewed the Police Chiefs' Association³ of Santa Clara County's County Elder and Dependent Adult Abuse Protocol (County Elder Abuse Protocol),⁴ 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.

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

³ 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.

⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸

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

⁵ <http://quickfacts.census.gov/qfd/states/06/06085.html>;

<http://www.dof.ca.gov/research/demographic/reports/projections/P-1>.

⁶ All references to code sections are to those of California.

⁷ Penal Code §§ 368(f) and (g).

⁸ Penal Code § 368(a).

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

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.¹¹

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.).¹²

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

⁹ Penal Code §368.5(a).

¹⁰ Penal Code §368.5(b).

¹¹ Penal Code § 13515(a)

¹² 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."¹³

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.¹⁴

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.¹⁵ 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.¹⁶ 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.¹⁷

¹³ County Elder Abuse Protocol at 7.

¹⁴ County Elder Abuse Protocol at 70.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ 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.¹⁸

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.¹⁹ There are three principal references regarding elder and dependent abuse: Penal Code Section 368, Lexipol Policy 326²⁰ 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

¹⁸ For a complete list of relevant documents reviewed, see Appendix C.

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

²⁰ 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.²¹ 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.²² Lexipol Policy 326 also provides that the investigation supervisor is

²¹ www.lexipol.com/about-us.

²² 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.²³

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."²⁴ 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.²⁵ Moreover, a crime report must be written for suspected abuse, as well as unfounded/unsubstantiated abuse.²⁶ 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.²⁷

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

²³ Ibid.

²⁴ County Elder Abuse Protocol at 6

²⁵ Id. at 15.

²⁶ Id. at 25.

²⁷ 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"²⁸ and SJPD officers are directed to investigate "physical" incidents of elder abuse by using the County Child Abuse Protocol.²⁹ 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

²⁸ San Jose Police Department's Duty Manual at xv.

²⁹Id. 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.³⁰ 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.³¹

The California Constitution confers certain enumerated rights to victims of crime.³² 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.

³⁰ 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>

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

³² 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.³³

“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.³⁴

“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.³⁵

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.”³⁶ 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.

³³ Welfare and Institutions Code § 15610.07.

³⁴ Welfare and Institutions Code § 15610.53.

³⁵ Welfare and Institutions Code §§ 15610.43(a)(1) and (2).

³⁶ 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)³⁷
- 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

³⁷ <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)
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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