

# California Regulations for APS

## Transfer of Learning Guide

We create experiences that transform the heart, mind and practice.

# California regulations

## Transfer of Learning Workbook

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**N**o one expects APS workers to memorize all the laws and regulations that apply to elder and dependent adult abuse cases, especially since these laws and regulations encompass welfare and institution codes, penal codes, probate codes, and health and safety codes. Therefore, this workbook will focus on helping workers to locate and interpret laws and regulations.

By the end of this training, and through the use of this workbook, participants will be able to research WIC codes and regulations to determine a correct course of action in APS cases. They will be exposed to relevant penal codes and have a basic understanding of penal code 368. In addition, they will have opportunities to explore the laws and regulations that determine who is a mandated reporter and who they can talk to about a case.

### Supervisor Activities

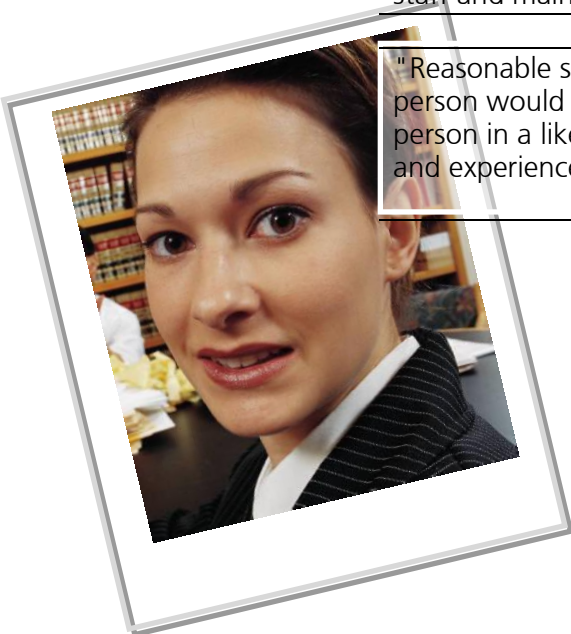
**T**he following pages offer information and activities to enhance the learning experience of participants that have completed the California Regulations eLearning. Worksheets without the answers are at the end of the manual. The supervisor may want to review the eLearning to understand what participants know at this point in their training.



## 1. Match the WIC code to its text.


Match the WIC code on the left with its language on the right. This exercise is meant to familiarize you with the process of looking up laws related to APS. You can find the Welfare and Institution Codes at: <http://www.leginfo.ca.gov/calaw.html>

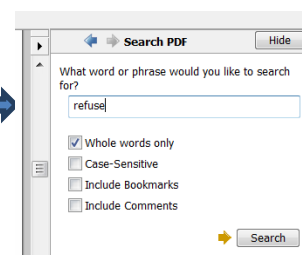
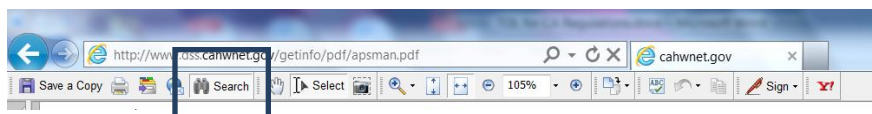
|              |   |
|--------------|---|
| WIC codes:   | Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible. (15630.b) |
| 15610.65     |   |
| 15630.b      |   |
| 15633(a)     |   |
| 15610.17     | "Protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment: (15657.03b(3))  |
| 15657.03b(3) | The reports made pursuant to Sections 15630, 15630.1, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars (\$500), or by both that fine and imprisonment. (15633(a))  |
|              | "Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff: (15610.17)   |
|              | "Reasonable suspicion" means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse. (15610.65)  |



## 2. Practice Looking Up California Regulations

The California APS Regulations are located at <http://www.dss.cahwnet.gov/getinfo/pdf/apsman.pdf>. For this exercise, you are to read a short vignette and, using the regulations, determine the answer to the question(s) posed. To help you with your search for answers, you might want to click on the

search icon  for the regulations document and then type in key words in the search box on the right. You will find the ability to research regulations can be very helpful.



1. The APS worker gets a report that Mr. Harper's son has stolen his car. When the worker arrives at the home, Mr. Harper tells the worker that he does not want the worker "poking into his business" and demands that the worker leave. The worker is unclear as to whether the car was stolen. Based on the regulations, should the worker close the case (honoring the client's right to self-determination) or continue to investigate (because a crime may have been committed)?

*Answer: Continue to investigate per 33-535.521 ("If a violation of the Penal Code has been alleged, the adult protective services agency shall continue with the investigation of the report of known or suspected abuse or neglect, even though the client refuses services").*

2. The report received by APS said that Mrs. Lambert seemed "really out of it" and was neglecting herself and her home. The APS worker helped Mrs. Lambert get her medications straighten out which resulted in Mrs. Lambert having better mental clarity. Mrs. Lambert is doing a lot better now, taking care of her home and her own hygiene but the worker is still concerned that Mrs. Lambert may slip up on her medications again. Based on the regulations, should the worker close the case or should she continue to provide case management services?

*Answer: Close the case because, per 33-110.2, "the adult protective services program is not intended to be a long-term, on-going "case management" activity."*

3. The APS worker was able to convince Mrs. Sung to file a restraining order against her abusive son during her initial visit to Mrs. Sung's home. On the subsequent visit, Mrs. Sung thanked the worker for her concern but stated that she (Mrs. Sung) had decided that she wanted to allow her son to return home. She asked the worker to close her case. Can the worker close this case given that Mrs. Sung is returning to a dangerous situation (assuming the worker was unable to convince Mrs. Sung to accept any other protective measures)?

*Answer: Yes, the case can be closed as, per 33-110.8, "An elder or dependent adult who has been abused, as defined in Section 33-130(a)(3), may refuse or withdraw consent at any time to preventive and remedial services offered by an adult protective services agency." However, be sure to document the client's choice using quotes.*

### 3. Mandated versus non mandated reporters

Please determine whether the following individuals are mandated or nonmandated reporters of elder abuse based on the WIC code below.

Section 15630(a) of the Welfare and Institutions Code states:  
"Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter."

|  |          |             |
|--|----------|-------------|
| A credit union employee.....                                 | mandated | nonmandated |
| A postal carrier.....  | mandated | nonmandated |
| Meals-on-Wheels delivery person.....                         | mandated | nonmandated |
| Podiatrist.....  | mandated | nonmandated |
| Home health nurse.....                                       | mandated | nonmandated |
| Home health care agency owner.....                           | mandated | nonmandated |
| Hairdresser.....   | mandated | nonmandated |
| Disability van driver.....                                   | mandated | nonmandated |
| Custodian at a sheltered workshop.....                       | mandated | nonmandated |
| A Catholic priest.....                                       | mandated | nonmandated |
| A neighbor who provides (unpaid) respite one day a week..... | mandated | nonmandated |
| Mental health case worker.....                               | mandated | nonmandated |
| Bank manager.....  | mandated | nonmandated |
| Public notary.....   | mandated | nonmandated |
| Plumber.....   | mandated | nonmandated |
| Child Protective Services worker.....                        | mandated | nonmandated |
| Daughter who lives with mom and takes her to the doctor..... | mandated | nonmandated |
| Son who lives with mom but provides nothing in return.....   | mandated | nonmandated |
| Volunteer friendly visitor.....                              | mandated | nonmandated |

### 4. Confidentiality

Read this short case study and then use the Confidentiality handout to help you answer the following questions.

Kevin Jones is a 38 year old man who suffers from a back injury requiring him to use crutches to ambulate. His home qualifies as a hoarder's home. There are clear paths between rooms but the rest of the floor is covered with stuff including used food containers and dirty diapers. Mr. Jones is the father of three young boys, ages 1, 3, and 6. Mr. Jones has a paid caregiver to help him with personal care but she is only paid to clean-up after him and can't manage cleaning-up after three active children and the hoarding mess. You note that Mr. Jones seems a bit confused about his medication and that there is medication within reach of the children. Mr. Jones is a very private person and, although he is willing to have people come in to help clean-up the home, he is unwilling to sign an authorization for you to talk to anyone else.

### To whom can you talk about this case?

Can you talk to your supervisor?  Yes  No

*Yes, you should discuss all cases with your supervisor*

Can you talk to child protective services?  Yes  No

*You need to make a report to CPS as the situation puts the children at risk and you are a mandated reporter of child abuse.*

Can you talk to the paid caregiver?  Yes  No

*Not without the client's permission.*

Can you talk to Mr. Jones' neighbors?  Yes  No

*No, however practices may vary as to what questions you might be able to ask the neighbor.*

Can you talk to the home cleaning crew?  Yes  No

*You can talk to the cleaning crew about the job requirements but not about Mr. Jones' situation otherwise.*

Can you talk to the children's absent mother?  Yes  No

*No. CPS will talk to her about the children. You don't have permission to discuss Mr. Jones' situation with her. It should be noted that you may get subpoenaed to testify at the CPS case. Be sure to show the subpoena to your supervisor before you respond to it as there are limits to what you can give the court, even with a subpoena.*

Can you talk to county mental health?  Yes  No

*You can not talk to Mental Health about this case except in the context of an MDT meeting. It is unlikely Mr. Jones would accept unsolicited help in any case.*

Can you speak to Mr. Jones' doctor?  Yes  No

*You can not talk to Mr. Jones' doctor without his consent, unless the doctor is part of the MDT.*

Can you talk to the original reporter?  Yes  No

*Different jurisdictions have different policies about contacting reporting parties. You can not tell the reporter the outcome of the case unless they are a member of the MDT. Some jurisdictions require you to tell the reporting party whether a case has been opened and that you have closed the case.*

Can you talk about this case to the multidisciplinary team?  Yes  No

*Yes, you can discuss this case at the MDT as all members of the team have to maintain confidentiality.*

Now, discuss these answers with your supervisor and be prepared to explain any limitations to your answers. For example: Are there some people you can request information from but can't give information to?



## Confidentiality

15633. (a) The reports made pursuant to Sections 15630, 15630.1, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the **confidentiality** required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars (\$500), or by both that fine and imprisonment.

(b) Reports of suspected abuse of an elder or dependent adult and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same **confidentiality** penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and **confidentiality** rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse, nor shall it be construed to prohibit the disclosure by a financial institution of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be required of a financial institution by otherwise applicable state or federal law or court order.

15633.5. (a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, or an investigator of the Department of Consumer Affairs, Division of Investigation who is investigating a known or suspected case of elder or dependent adult abuse.

(b) The identity of any person who reports under this chapter shall be confidential and disclosed only among the following agencies or persons representing an agency:

(1) An adult protective services agency.

(2) A long-term care ombudsperson program.

(3) A licensing agency.

(4) A local law enforcement agency.

(5) The office of the district attorney.

(6) The office of the public guardian.

(7) The probate court.

(8) The bureau.

(9) The Department of Consumer Affairs, Division of Investigation.

(10) Counsel representing an adult protective services agency.

(c) The identity of a person who reports under this chapter may also be disclosed under the following circumstances:

(1) To the district attorney in a criminal prosecution.

(2) When a person reporting waives **confidentiality**.

(3) By court order.

(d) Notwithstanding subdivisions (a), (b), and (c), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.



## 5) Identify the abuse:

In some cases, the abuse you are sent out to investigate may not be the abuse you find, or may not be the only abuse you find. Read the following short case scenarios. Then, using the definitions in Adult Protective Services Program Regulations, section 33-130, determine what type(s) of abuse you would be investigating.

a. Virginia Booth, age 62, has diabetes and a personality disorder. She would walk very unsteadily in her mobile home park and yell at children, threatening them. She dumped trash on her neighbor's property. She had 10 cats and no litter boxes. The home smelled terrible and was in disrepair. Ms. Booth was very resistant to worker's intervention but the worker listened to her complaints and tried to address them. Ms. Booth felt that the neighbors were plotting against her and the neighborhood kids were harassing and making fun of her. Ms. Booth also said that park manager has raised her rent to try and get her to move. After further discussion, Ms. Booth indicated that she recently began watching a television preacher and, based on her understanding of his message, she threw away all her medications.

**What type(s) of abuse should you be investigating in this case?** (Self-neglect and possible financial abuse by the park manager)

b. APS received a report that Marcus Lorenz, age 82, had been hospitalized after being beaten by his son and caregiver, David Lorenz. When APS arrived at the hospital, Mr. Lorenz's doctor stated that Mr. Lorenz has a severe head trauma, bruises over his upper body from being kicked, as well as malnutrition. Marcus Lorenz told APS that David beat him when he refused to give David permission to use his car. According to the police, David and the car are still missing.

**What type(s) of abuse should you be investigating in this case?** (Physical abuse and financial abuse, as well as caregiver neglect)

c. Mrs. Evan, age 72, was referred to APS because she is facing eviction from her apartment. During the initial interview, Mrs. Evan stated that she had been doing ok with money until her son moved in with her. Since she had been paying his living expenses as well as her own for the last five months, she is now behind on all her bills. Besides worrying about her bills and her eviction, Mrs. Evan is worried about her son. He has disappeared. She doesn't know why he left and whether he is ok. And, since he was doing the grocery shopping and taking her to the doctor, Mrs. Evan is concerned about how she will manage now.

**What type(s) of abuse should you be investigating in this case?** (Financial abuse, self-neglect and abandonment)

d. Mrs. Albertson is a 76 year old stroke victim who is confined to her bed. She is basically nonverbal and her husband is her paid (by the state) caregiver. Her doctor reported to APS that he believes that she is not getting adequate care. During the first visit, APS found that Mrs. Albertson had decubitus ulcers on her tailbone and bruises on her inner thighs. APS offered to arrange for additional care for Mrs. Albertson, but Mr. Albertson refused stating that he needs all the hours he is getting in order to pay their bills.

**What type of abuse should you be investigating in this case?** (Sexual abuse, caregiver neglect and financial abuse)

## 6) Penal Code Violations

Read the following short scenarios and determine whether or not the client can refuse the **investigation**\* based on W&IC 15636(a) which states "Any victim of Elder/Dependent adult abuse may refuse or withdraw consent at any time to an investigation or provision of services. APS shall act only with consent **UNLESS** a violation of a penal code is believed to have occurred." (See Penal Code Violations handout) \*Clients retain the right to refuse **services**.

- a) Mrs. Murphy's son told her that he would put her in a nursing home if she did not loan him money for a new car. They did complete and sign paperwork stating the terms of the loan and the interest to be paid. Can Mrs. Murphy refuse the investigation? \_\_\_Yes \_\_\_No

No: her son extorted the money from her per **PENAL CODE §§ 518; 519**

- b) The allegation is that, when Janet's daughter is upset with Janet, she withholds pain medication from Janet and taunts her about it. Can Janet refuse the investigation? \_\_\_Yes \_\_\_No

No: her daughter is torturing her per **PENAL CODE § 206**

- c) Mr. Koffa stated that his nephew attempted to hit him but Mr. Koffa moved out of the way and so the nephew only punched a hole in the wall. Can Mr. Koffa refuse the investigation? \_\_\_Yes \_\_\_No

No: his nephew committed an assault per **PENAL CODE § 240**

- d) John Newman is reported, by a neighbor, to be having difficulty getting to his doctors' appointments, getting to the grocery store and doing his own laundry. He has no available relatives and can not afford a paid care provider. Can Mr. Newman refuse the investigation? \_\_\_Yes \_\_\_No

Yes: This is a case of self-neglect which is not a crime.

- e) Ms. Mensa has stopped taking her medications for schizophrenia, forgets to buy groceries or pay her bills, is on the verge of being evicted and is concerned that her neighbors are using voodoo rituals to make her ill. Can Ms. Mensa refuse the investigation? \_\_\_Yes \_\_\_No

No: but this is a trick question. There is no penal code violation but it appears that Ms. Mensa meets the criteria for a conservatorship and therefore the worker needs to investigate to make a referral to the public guardian.

- f) APS receives a call from Mrs. Vetta's neighbor stating that Mrs. Vetta's home looks "just like one of the houses you see on Hoarders". During the initial visit Mrs. Vetta shows no cognitive dysfunction beyond her attachment to all her junk. Can Mrs. Vetta refuse the investigation? \_\_\_Yes \_\_\_No

Yes: There is currently no penal code violation reported. (There may be a code enforcement violation at some point but that is not the same as a penal code violation).

## Penal Code Violations

Any victim of Elder/Dependent adult abuse may refuse or withdraw consent at any time to an investigation or provision of services. APS shall act only with consent **UNLESS** a violation of a penal code is believed to have occurred. W&IC 15636(a).

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|---|--|
| <p><b>PENAL CODE § 186.10</b><br/>Money Laundering</p> <p><b>PENAL CODE § 187</b><br/>Murder</p> <p><b>PENAL CODE § 206</b><br/>Torture</p> <p><b>PENAL CODE § 207</b><br/>Kidnapping</p> <p><b>PENAL CODE § 209</b><br/>Kidnapping for ransom, reward, or extortion, or to commit robbery or rape; punishment</p> <p><b>PENAL CODE § 211</b><br/>Robbery</p> <p><b>PENAL CODE § 220</b><br/>Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with foreign object; punishment</p> <p><b>PENAL CODE § 237 (b)</b><br/>False imprisonment; elder or dependent adult</p> <p><b>PENAL CODE § 240</b><br/>Assault</p> <p><b>PENAL CODE §§ 242; 243</b><br/>Battery</p> <p><b>PENAL CODE § 243.25</b><br/>Battery against person of elder or dependent abuse; punishment</p> <p><b>PENAL CODE § 243.4 (b)</b><br/>Sexual battery of serious disabled or medically incapacitated</p> <p><b>PENAL CODE § 245</b><br/>Assault with deadly weapon or force likely to produce great bodily injury; punishment</p> <p><b>PENAL CODE § 261 (a)(1)</b><br/>Rape; lack of capacity</p> <p><b>PENAL CODE § 270c</b><br/>Failure of adult child to provide for indigent parent</p> <p><b>PENAL CODE § 286 (g), (h)</b><br/>Sodomy; lack of capacity</p> <p><b>PENAL CODE § 288 (b)(2), (c)(2)</b><br/>Lewd or lascivious acts; lack of capacity</p> <p><b>PENAL CODE § 288a (d), (g), (h)</b><br/>Oral copulation; lack of capacity</p> | <p><b>PENAL CODE § 289 (b), (c)</b><br/>Forcible acts of sexual penetration; lack of capacity</p> <p><b>PENAL CODE § 368</b><br/>Crimes against elder or dependent adults</p> <p><b>PENAL CODE §§ 422.55; 422.6</b><br/>Hate crime; disability is protected class</p> <p><b>PENAL CODE § 459</b><br/>Burglary</p> <p><b>PENAL CODE §§ 470-476</b><br/>Forgery</p> <p><b>PENAL CODE § 483.5</b><br/>Deceptive identification documents; requirements for manufacture, sale or transport; punishment</p> <p><b>PENAL CODE §§ 484, 487, 488</b><br/>Theft, grand theft; petty theft</p> <p><b>PENAL CODE §§ 484d-484j</b><br/>Credit card theft</p> <p><b>PENAL CODE § 496</b><br/>Receiving stolen property</p> <p><b>PENAL CODE § 502</b><br/>Unauthorized access to computers, computer systems, and computer data</p> <p><b>PENAL CODE § 503</b><br/>Embezzlement</p> <p><b>PENAL CODE §§ 518; 519</b><br/>Extortion; Fear used to extort; threats inducing</p> <p><b>PENAL CODE § 529</b><br/>False personation</p> <p><b>PENAL CODE § 529.5</b><br/>Counterfeit documents</p> <p><b>PENAL CODE § 530.5</b><br/>Identity Theft</p> <p><b>PENAL CODE § 532a</b><br/>False financial statements; punishment</p> <p><b>PENAL CODE § 594</b><br/>Vandalism</p> <p><b>PENAL CODE § 664</b><br/>Attempts; punishment</p> |
|---|--|

## 7) Penal code 368

The following questions are meant to familiarize you with California's penal code 368 which lists sentencing enhancement for perpetrators of elder and dependent adult abuse. These are penalties *in addition to* the penalties for the original crime (e.g. theft, assault, false imprisonment). Many law enforcement officers are not aware of penal code 368. Drawing their attention to it can increase their motivation to charge a perpetrator for a "simple misdemeanor", thereby enhance your ability to obtain justice for your clients. Use the Penal Code 368 handout to help you answer the questions.

A thief targets a woman walking out of a mall, knocks her down and steals her purse. The purse contains \$150. The thief later uses the woman's charge cards to buy \$900 worth of stereo **No because there is nothing to indicate that the woman is either an elder or a dependent adult.**

Now, let's add that the woman was using a walker. *With this information, can law enforcement use penal code 368?* \_\_\_Yes \_\_\_No

**Yes because she has an obvious disability.**

Now, instead of using a walker, let's say that anyone looking at her would judge her age as "in her seventies". *With this information, can law enforcement use penal code 368?* \_\_\_Yes \_\_\_No

**Yes, because the thief should have reasonably known she was an elder.**

Now, let's say that when the thief knocked her down, she broke her hip. *Would the police be able to charge the thief with penal code 368(b)(2), penal code 368(b)(3) or penal code 368(c)?*

**PC368(b)(2) because a broken hip qualifies as great bodily harm.**

*Based on this scenario, would the thief get a \$2,500 fine and/or 1 year in county jail or a fine of up to \$1,000 and/or less than 1 year in county jail or a fine up to \$10,000?*

**PC368(d)(1) applies since the thief is not a caregiver and the amount stolen is over \$950**

Let's try a different situation. Suppose Mrs. Heinz's IHSS care provider steals Mrs. Heinz's father's pocket watch. The watch has very little cash value but has great sentimental value to Mrs. Heinz. Besides the penalties for thief, *what is the amount of the fine the IHSS care provider might have to pay under penal code 368?* \_\_\_\_\_ **\$1,000**

## Penal code 368

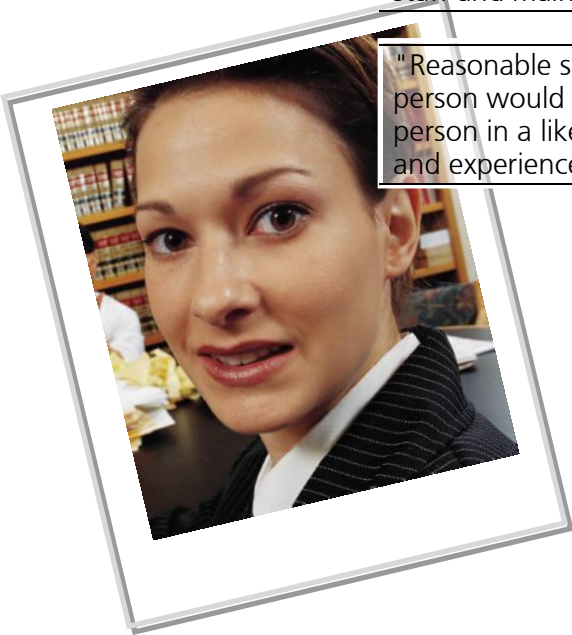
| Penal code 368  | Summary   |
|---|---|
| <p>368.(a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.</p> <p>(b) (1) Any person who knows or <b>reasonably should know</b> that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.</p> <p>(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:</p> <p>(A) Three years if the victim is under 70 years of age.</p> <p>(B) Five years if the victim is 70 years of age or older.</p> <p>(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:</p> <p>(A) Five years if the victim is under 70 years of age.</p> <p>(B) Seven years if the victim is 70 years of age or older.</p> <p>(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.</p> <p>(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:</p> <p>(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).</p> <p>(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and</p> | <p>368(a) Elders and dependent adults are a <b>protected class</b>.</p> <p>368(b)(1) <b>Penalty</b> for harming elder or dependent adult is 1 year in county jail and/or \$6,000 fine or state prison for up to 4 years.</p> <p>368(b)(2) If victim suffers <b>great bodily harm</b> and is: under 70, penalty is an additional 3 years in prison; if over 70, penalty is an additional 5 years.</p> <p>368(b)(3) If the perpetrator causes <b>death</b> and the victim is: under 70, the penalty is an additional 5 years in prison; if over 70, penalty is an additional 7 years.</p> <p>368(c) <b>Harming</b> an elder or dependent adult (&gt; great bodily harm) is a misdemeanor.</p> <p>368(d) Non-caretaker <b>theft</b> from an elder/dependent adult, including ID theft is punishable by \$2,500 fine and/or 1 year in county jail or by up to 4 years in prison, if the value of stolen property is &lt; \$950.</p> <p>Fine is up to \$1,000 and/or less than 1 year in county jail is the stolen property is &gt; \$950.</p> |

|  |  |
|--|--|
| <p>imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).</p> <p>(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:</p> <p>(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).</p> <p>(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).</p> <p>(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.</p> <p>(g) As used in this section, "elder" means any person who is 65 years of age or older.</p> <p>(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.</p> <p>(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.</p> <p>(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.</p> <p>(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.</p> | <p>368(e) <b>Caretaker theft</b> has higher fines (up to \$10,000 if the theft is &lt;\$950)</p> <p>368(f) <b>False Imprisonment</b> is punishable by up to 4 years.</p> <p>368(g) Defines elder</p> <p>368(h) defines dependent adult</p> <p>368(i) Defines caretaker</p> <p>368(j) Sentencing limitations</p> <p>368(k) <b>Counseling</b> can be a provision of probation.</p> |
|--|--|

1. Match the WIC code to its text.


Match the WIC code on the left with its language on the right. This exercise is meant to familiarize you with the process of looking up laws related to APS. You can find the Welfare and Institution Codes at: <http://www.leginfo.ca.gov/calaw.html>

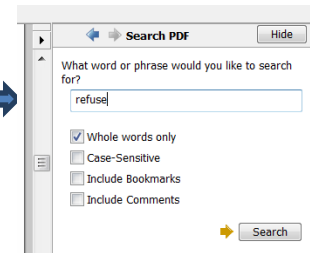
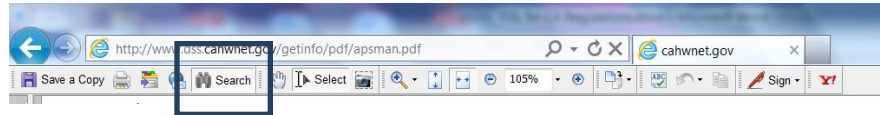
|              |   |
|--------------|---|
| WIC codes:   | Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible. |
| 15610.65     |   |
| 15630.b      |   |
| 15633(a)     |   |
| 15610.17     | "Protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:   |
| 15657.03b(3) | The reports made pursuant to Sections 15630, 15630.1, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars (\$500), or by both that fine and imprisonment.   |
|              | "Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:  |
|              | "Reasonable suspicion" means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.   |



## 2. Practice Looking Up California Regulations

The California APS Regulations are located at <http://www.dss.cahwnet.gov/getinfo/pdf/apsman.pdf>. For this exercise, you are to read a short vignette and, using the regulations, determine the answer to the question(s) posed. To help you with your search for answers, you might want to click on the

search icon  for the regulations document and then type in key words in the search box on the right. You will find the ability to research regulations can be very helpful.



1. The APS worker gets a report that Mr. Harper's son has stolen his car. When the worker arrives at the home, Mr. Harper tells the worker that he does not want the worker "poking into his business" and demands that the worker leave. The worker is unclear as to whether the car was stolen. Based on the regulations, should the worker close the case (honoring the client's right to self-determination) or continue to investigate (because a crime may have been committed)?

2. The report received by APS said that Mrs. Lambert seemed "really out of it" and was neglecting herself and her home. The APS worker helped Mrs. Lambert get her medications straighten out which resulted in Mrs. Lambert having better mental clarity. Mrs. Lambert is doing a lot better now, taking care of her home and her own hygiene but the worker is still concerned that Mrs. Lambert may slip up on her medications again. Based on the regulations, should the worker close the case or should she continue to provide case management services?

3. The APS worker was able to convince Mrs. Sung to file a restraining order against her abusive son during her initial visit to Mrs. Sung's home. On the subsequent visit, Mrs. Sung thanked the worker for her concern but stated that she (Mrs. Sung) had decided that she wanted to allow her son to return home. She asked the worker to close her case. Can the worker close this case given that Mrs. Sung is returning to a dangerous situation (assuming the worker was unable to convince Mrs. Sung to accept any other protective measures)?



### 3. Mandated versus non mandated reporters

Please determine whether the following individuals are mandated or nonmandated reporters of elder abuse based on the WIC code below.

Section 15630(a) of the Welfare and Institutions Code states:  
"Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter."

|  |          |             |
|--|----------|-------------|
| A credit union employee.....                                 | mandated | nonmandated |
| A postal carrier.....  | mandated | nonmandated |
| Meals-on-Wheels delivery person.....                         | mandated | nonmandated |
| Podiatrist.....  | mandated | nonmandated |
| Home health nurse.....                                       | mandated | nonmandated |
| Home health care agency owner.....                           | mandated | nonmandated |
| Hairdresser.....   | mandated | nonmandated |
| Disability van driver.....                                   | mandated | nonmandated |
| Custodian at a sheltered workshop.....                       | mandated | nonmandated |
| A Catholic priest.....                                       | mandated | nonmandated |
| A neighbor who provides (unpaid) respite one day a week..... | mandated | nonmandated |
| Mental health case worker.....                               | mandated | nonmandated |
| Bank manager.....  | mandated | nonmandated |
| Public notary.....   | mandated | nonmandated |
| Plumber.....   | mandated | nonmandated |
| Child Protective Services worker.....                        | mandated | nonmandated |
| Daughter who lives with mom and takes her to the doctor..... | mandated | nonmandated |
| Son who lives with mom but provides nothing in return.....   | mandated | nonmandated |
| Volunteer friendly visitor.....                              | mandated | nonmandated |

### 4. Confidentiality

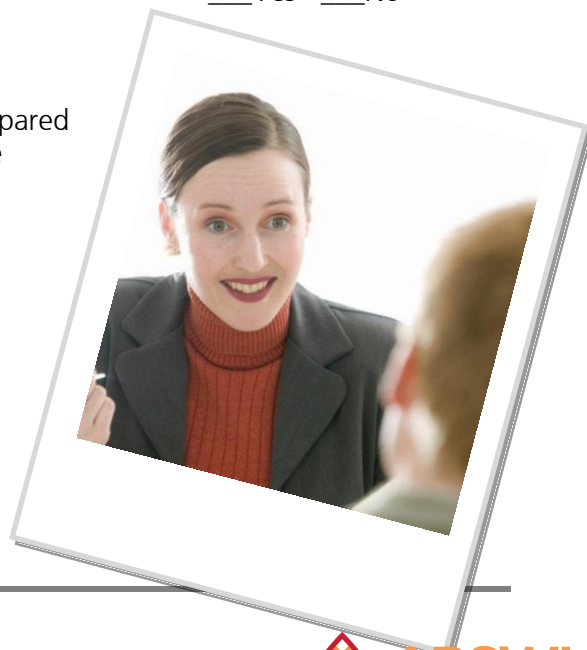
Read this short case study and then use the Confidentiality handout to help you answer the following questions.

Kevin Jones is a 38 year old man who suffers from a back injury requiring him to use crutches to ambulate. His home qualifies as a hoarder's home. There are clear paths between rooms but the rest of the floor is covered with stuff including used food containers and dirty diapers. Mr. Jones is the father of three young boys, ages 1, 3, and 6. Mr. Jones has a paid caregiver to help him with personal care but she is only paid to clean-up after him and can't manage cleaning-up after three active children and the hoarding mess. You note that Mr. Jones seems a bit confused about his medication and that there is medication within reach of the children. Mr. Jones is a very private person and, although he is willing to have people come in to help clean-up the home, he is unwilling to sign an authorization for you to talk to anyone else.

### To whom can you talk about this case?

- Can you talk to your supervisor?  Yes  No
- Can you talk to child protective services?  Yes  No
- Can you talk to the paid caregiver?  Yes  No
- Can you talk to Mr. Jones' neighbors?  Yes  No
- Can you talk to the home cleaning crew?  Yes  No
- Can you talk to the children's absent mother?  Yes  No
- Can you talk to county mental health?  Yes  No
- Can you speak to Mr. Jones' doctor?  Yes  No
- Can you talk to the original reporter?  Yes  No
- Can you talk about this case to the multidisciplinary team?  Yes  No

Now, discuss these answers with your supervisor and be prepared to explain any limitations to your answers. For example: Are there some people you can request information from but can't give information to?



## 5) Identify the abuse:

In some cases, the abuse you are sent out to investigate may not be the abuse you find, or may not be the only abuse you find. Read the following short case scenarios. Then, using the definitions in Adult Protective Services Program Regulations, section 33-130, determine what type(s) of abuse you would be investigating.

a. Virginia Booth, age 62, has diabetes and a personality disorder. She would walk very unsteadily in her mobile home park and yell at children, threatening them. She dumped trash on her neighbor's property. She had 10 cats and no litter boxes. The home smelled terrible and was in disrepair. Ms. Booth was very resistant to worker's intervention but the worker listened to her complaints and tried to address them. Ms. Booth felt that the neighbors were plotting against her and the neighborhood kids were harassing and making fun of her. Ms. Booth also said that park manager has raised her rent to try and get her to move. After further discussion, Ms. Booth indicated that she recently began watching a television preacher and, based on her understanding of his message, she threw away all her medications.

**What type(s) of abuse should you be investigating in this case?**

b. APS received a report that Marcus Lorenz, age 82, had been hospitalized after being beaten by his son and caregiver, David Lorenz. When APS arrived at the hospital, Mr. Lorenz's doctor stated that Mr. Lorenz has a severe head trauma, bruises over his upper body from being kicked, as well as malnutrition. Marcus Lorenz told APS that David beat him when he refused to give David permission to use his car. According to the police, David and the car are still missing.

**What type(s) of abuse should you be investigating in this case?**

c. Mrs. Evan, age 72, was referred to APS because she is facing eviction from her apartment. During the initial interview, Mrs. Evan stated that she had been doing ok with money until her son moved in with her. Since she had been paying his living expenses as well as her own for the last five months, she is now behind on all her bills. Besides worrying about her bills and her eviction, Mrs. Evan is worried about her son. He has disappeared. She doesn't know why he left and whether he is ok. And, since he was doing the grocery shopping and taking her to the doctor, Mrs. Evan is concerned about how she will manage now.

**What type(s) of abuse should you be investigating in this case?**

d. Mrs. Albertson is a 76 year old stroke victim who is confined to her bed. She is basically nonverbal and her husband is her paid (by the state) caregiver. Her doctor reported to APS that he believes that she is not getting adequate care. During the first visit, APS found that Mrs. Albertson had decubitus ulcers on her tailbone and bruises on her inner thighs. APS offered to arrange for additional care for Mrs. Albertson, but Mr. Albertson refused stating that he needs all the hours he is getting in order to pay their bills.

**What type of abuse should you be investigating in this case?**

## 6) Penal Code Violations

Read the following short scenarios and determine whether or not the client can refuse the **investigation**\* based on W&IC 15636(a) which states "Any victim of Elder/Dependent adult abuse may refuse or withdraw consent at any time to an investigation or provision of services. APS shall act only with consent **UNLESS** a violation of a penal code is believed to have occurred." (See Penal Code Violations handout) \*Clients retain the right to refuse **services**.

- a) Mrs. Murphy's son told her that he would put her in a nursing home if she did not loan him money for a new car. They did complete and sign paperwork stating the terms of the loan and the interest to be paid. Can Mrs. Murphy refuse the investigation? \_\_\_Yes \_\_\_No
- b) The allegation is that, when Janet's daughter is upset with Janet, she withholds pain medication from Janet and taunts her about it. Can Janet refuse the investigation? \_\_\_Yes \_\_\_No
- c) Mr. Koffa stated that his nephew attempted to hit him but Mr. Koffa moved out of the way and so the nephew only punched a hole in the wall. Can Mr. Koffa refuse the investigation? \_\_\_Yes \_\_\_No
- d) John Newman is reported, by a neighbor, to be having difficulty getting to his doctors' appointments, getting to the grocery store and doing his own laundry. He has no available relatives and can not afford a paid care provider. Can Mr. Newman refuse the investigation? \_\_\_Yes \_\_\_No
- e) Ms. Mensa has stopped taking her medications for schizophrenia, forgets to buy groceries or pay her bills, is on the verge of being evicted and is concerned that her neighbors are using voodoo rituals to make her ill. Can Ms. Mensa refuse the investigation? \_\_\_Yes \_\_\_No
- f) APS receives a call from Mrs. Vetta's neighbor stating that Mrs. Vetta's home looks "just like one of the houses you see on Hoarders". During the initial visit Mrs. Vetta shows no cognitive dysfunction beyond her attachment to all her junk. Can Mrs. Vetta refuse the investigation? \_\_\_Yes \_\_\_No

## 7) Penal code 368

The following questions are meant to familiarize you with California's penal code 368 which lists sentencing enhancement for perpetrators of elder and dependent adult abuse. These are penalties *in addition to* the penalties for the original crime (e.g. theft, assault, false imprisonment). Many law enforcement officers are not aware of penal code 368. Drawing their attention to it can increase their motivation to charge a perpetrator for a "simple misdemeanor", thereby enhance your ability to obtain justice for your clients. Use the Penal Code 368 handout to help you answer the questions.

A thief targets a woman walking out of a mall, knocks her down and steals her purse. The purse contains \$150. The thief later uses the woman's charge cards to buy \$900 worth of stereo equipment. *With this information, can law enforcement use penal code 368?* \_\_\_Yes \_\_\_No

Now, let's add that the woman was using a walker. *With this information, can law enforcement use penal code 368?* \_\_\_Yes \_\_\_No

Now, instead of using a walker, let's say that anyone looking at her would judge her age as "in her seventies". *With this information, can law enforcement use penal code 368?* \_\_\_Yes \_\_\_No

Now, let's say that when the thief knocked her down, she broke her hip. *Would the police be able to charge the thief with penal code 368(b)(2), penal code 368(b)(3) or penal code 368(c)?*

\_\_\_\_\_

*Based on this scenario, would the thief get a \$2,500 fine and/or 1 year in county jail **or** a fine of up to \$1,000 and/or less than 1 year in county jail **or** a fine up to \$10,000?*

\_\_\_\_\_

Let's try a different situation. Suppose Mrs. Heinz's IHSS care provider steals Mrs. Heinz's father's pocket watch. The watch has very little cash value but has great sentimental value to Mrs. Heinz. Besides the penalties for thief, *what is the amount of the fine the IHSS care provider might have to pay under penal code 368?*

\_\_\_\_\_

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