


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> Adoption and Revision of Policies Regarding Senior and Disability Victimization</p>	<p><i>No.</i> 2023-DLE-05</p>	<p><i>Contact for information:</i> John D. Marsh, Chief Division of Law Enforcement (916) 210-6300</p>
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TO: ALL CALIFORNIA LOCAL LAW ENFORCEMENT AGENCIES

The California Department of Justice, Division of Law Enforcement, is issuing this Information Bulletin to remind local law enforcement agencies of requirements for written policies regarding the criminal victimization of seniors and people with disabilities, pursuant to Senate Bill 338 passed in 2019. Municipal police or county sheriffs’ departments that adopt or revise a policy regarding elder and dependent adult abuse or senior and disability victimization on or after April 13, 2021 must include the 28 items stated in Penal Code section 368.6, subdivision (c).

This Information Bulletin provides a summary of the law and suggested actions local law enforcement agencies should consider taking to ensure that their written policies comply with the requirements of Senate Bill 338 and Penal Code section 368.6.

Senate Bill 338

In 2019, California enacted Senate Bill 338 (the “Senior and Disability Justice Act”) to: draw attention to the wide extent of crimes against seniors and people with disabilities; reinforce that these acts are crimes, not merely civil matters; and “[s]trongly encourage every local law enforcement agency to adopt a comprehensive policy concerning these crimes, including effective, accountable, and locally developed protocols for carrying out the agency’s existing responsibilities.” (Cal. Sen. Bill 338 (2019-2020 Reg. Sess.) § 1, subd. (a)(2), (4).) Senate Bill 338 added Penal Code section 368.6, which authorizes local law enforcement agencies to adopt a policy regarding senior and disability victimization.¹ Section 368.6 went into effect on January 1, 2020.

1. Senate Bill 338 Requires Local Law Enforcement Agencies to Include 28 Items in Their Senior and Disability Victimization Policies

Every elder and dependent adult abuse or senior and disability victimization policy that is adopted or revised by local law enforcement on or after April 13, 2021 must include, but not be limited to, the following 28 items (Pen. Code, § 368.6, subd. (c)(1)-(28)):

¹ “Senior and disability victimization” is defined as elder and dependent abuse, homicide, sex crimes, domestic violence, child abuse, and hate crimes against seniors and people with actual or perceived disabilities, as well as the unlawful interference with mandated reporting or violation of any relevant protective order. (Cal. Pen. Code, § 368.6, subd. (b)(13)(A)-(H).)

- (1) Information on the wide prevalence of elder and dependent adult abuse, sexual assault, other sex crimes, hate crimes, domestic violence, human trafficking, and homicide against adults and children with disabilities, including disabilities caused by advanced age, and including those crimes often committed by caretakers.
- (2) A statement of the agency's commitment to providing equal protection and demonstrating respect for all persons regardless of age or disabilities, and to conscientiously enforcing all criminal laws protecting elders, and adults and children with disabilities, regardless of whether these crimes also carry civil penalties.
- (3) The definitions and elements of the offenses specified in Penal Code section 288, subdivision (b)(2) and section 368, subdivisions (c) and (f), noting that they protect many persons with disabilities regardless of the fact they live independently.
- (4)
 - (A) The fact that elder and dependent adult abuse, sex crimes, child abuse, domestic violence, and any other criminal act, when committed in whole or in part because of the victim's actual or perceived disability, including disability caused by advanced age, is also a hate crime.
 - (B) In recognizing suspected disability-bias hate crimes, the policy shall instruct officers to consider whether there is any indication that the perpetrator committed the criminal act because of bias, including, but not limited to, the bias motivations described in Penal Code section 422.87, subdivisions (a)(3)(B)-(C).
- (5) An agency protocol and schedule for training officers with both of the following:
 - (A) The training materials made available by the Commission on Peace Officer Standards and Training pursuant to Penal Code sections 13515, 13515.25, 13515.27-13515.35, and 13519.2. In the case of the training materials identified in each of these sections, the agency protocol shall require the training for, at a minimum, the category of officers for whom that section states that the training is intended or required or, if the section does not state for whom the training material is required or intended, those officers identified pursuant to paragraph (16).
 - (B) The agency's policy pursuant to this section.
- (6) A requirement that when an officer intends to interview a victim or witness to an alleged crime and the victim or witness reports or demonstrates deafness or hearing loss, the officer first secure the services of an interpreter as defined in Evidence Code section 754. The agency shall have a protocol for securing the services of the interpreter to ensure accurate interpretation.
- (7) An agency protocol for providing appropriate training concerning the agency's policy to dispatchers, community services officers, front desk personnel, and other civilian personnel who interact with the public.

- (8) (A) The fact that the agency requires officers to investigate every report of senior and disability victimization, and does not dismiss any reports as merely civil matters or for any other reason without an investigation.
- (B) An appendix to the policy describing the requirements for these investigations, including, but not limited to, all of the following:
 - (i) An agency protocol or protocols for cooperating and collaborating whenever possible with the Division of Medi-Cal Fraud and Elder Abuse, other state law enforcement agencies with jurisdiction, adult and child protective services, local long-term care ombudsman programs, and, when appropriate, other responsible agencies.
 - (ii) Appropriate techniques for interviewing potential victims and witnesses with cognitive or communication disabilities, including, but not limited to, avoiding repeated interviews when possible.
 - (iii) The elements of the investigation, including, but not limited to, all of the following:
 - (I) Checking prior reports received by adult or child protective services agencies, local long-term care ombudsman programs, except as provided in Welfare and Institutions Code section 9725, and any other responsible agencies.
 - (II) Interviewing each alleged victim, each witness, and each suspect who is available.
 - (III) Viewing all body-worn camera videos and all other films.
 - (IV) Listening to all calls from mandated reports or other callers.
 - (V) Making reasonable efforts to determine whether any person committed unlawful interference in a mandated report.
 - (iv) An agency protocol for transmitting the crime report to the appropriate prosecution office if the law enforcement agency recommends prosecution.
 - (v) If the agency deems it appropriate, the Investigation Response section and Addendum B of the San Diego County Elder and Dependent Adult Abuse Blueprint or the Elder Abuse Guide for Law Enforcement of the National Center on Elder Abuse at the University of Southern California.

- (9) (A) A statement that it is the agency's policy to make arrests or to seek arrest warrants, in accordance with Penal Code section 836, and, in the case of domestic violence, as allowed by Penal Code section 13701. The policy shall also state the agency protocol for seeking those arrest warrants.
- (B) The agency protocol for arrests for senior and disability victimization other than domestic violence, which shall include, but not be limited to, the following requirements:
 - (i) In the case of a senior and disability victimization committed in an officer's presence, including, but not limited to, a violation of a relevant protective order, the officer shall make a warrantless arrest based on probable cause when necessary or advisable to protect the safety of the victim or others.
 - (ii) In the case of a felony not committed in an officer's presence, the officer shall make a warrantless arrest based on probable cause when necessary or advisable to protect the safety of the victim or others.
 - (iii) In the case of a misdemeanor not committed in the officer's presence, including, but not limited to, misdemeanor unlawful interference with a mandated report or a misdemeanor violation of a relevant protective order, or when necessary or advisable to protect the safety of the victim or others, the agency shall seek an arrest warrant based on probable cause.
 - (iv) The policy shall state the agency protocol for seeking arrest warrants based on probable cause for crimes for which no arrest has been made.
- (10) The fact that senior and disability victimization crimes are also domestic violence subject to the mandatory arrest requirements under Penal Code section 836 if they meet the elements described in Penal Code section 273.5, including, but not limited to, a violation by a caretaker or other person who is or was a cohabitant of the victim, regardless of whether to cohabitant is or was a relative of, or in an intimate person relationship with, the victim.
- (11) (A) The fact that many victims of sexual assault and other sex crimes delay disclosing the crimes for reasons including, but not limited to, shame, embarrassment, self-doubt, fear of being disbelieved, and fear of retaliation by the perpetrator or others.
- (B) An instruction pursuant to Penal Code sections 264.2 and 679.04 to notify potential victims of sex crimes that they have a right to have a support person of their choice present at all times.
- (12) The agency's cross-reporting requirements, including, but not limited to, those pursuant to Welfare and Institutions Code section 15640, and an agency protocol for carrying out these cross-reporting requirements.

- (13) Mandated reporting requirements, including, but not limited to, officers' mandated reporting responsibilities and an agency protocol for carrying out the officers' mandated reporting responsibilities.
- (14) The fact that victims and witnesses with disabilities, including cognitive and communication disabilities, can be highly credible witnesses when interviewed appropriately by trained officers or other trained persons.
- (15) A procedure for first-responding officers to follow when interviewing persons with cognitive and communication disabilities until officers, or staff of other responsible agencies, with more advanced training, are available. The procedure shall include an instruction to avoid repeated interviews whenever possible.
- (16) The unit or office, or multiple units or offices of the agency, or the title or titles of an officer or officers, tasked with the following responsibilities:
 - (A) Receiving advanced officer training on senior and disability victimization, available from the Commission on Peace Officer Standards and Training, the United States Department of Justice, the Disability and Abuse Project of the Spectrum Institute, or other sources.
 - (B) Acting as a liaison to other responsible agencies to increase cooperation and collaboration among them while retaining the law enforcement agency's exclusive responsibility for criminal investigations.
 - (C) Reaching out to the senior and disabilities communities and to the public to encourage prevention and reporting of senior and disability victimization.
- (17) An agency protocol for seeking emergency protective orders by phone from a court at any time of the day or night pursuant to Family Code section 6250, subdivision (d), including the court system telephone number for an officer to call, and a requirement that an officer utilize the agency protocol whenever necessary or advisable to protect a victim's safety.
- (18) A requirement that all officers treat an unexplained or suspicious death of an elder, dependent adult, or other adult or child with a disability as a potential homicide until a complete investigation, including an autopsy, is completed, and not to assume that the death of an elder or person with a disability is natural simply because of the age or disability of the deceased.
- (19) A requirement that, whenever an officer verifies that a relevant protective order has been issued, the officer shall make reasonable efforts to determine if the order prohibits the possession of firearms or requires the relinquishment of firearms, and, if the order does so, a requirement that the officer shall make reasonable efforts to do each of the following:

- (A) Inquire whether the restrained person possesses firearms. The officer may make this effort by asking the restrained person and the protected person.
 - (B) Query through the California Law Enforcement Telecommunications System to determine if any firearms are registered to the restrained person.
 - (C) Receive or seize prohibited firearms located in plain view or pursuant to a consensual or other lawful search, in compliance with Division 4 (commencing with Section 18250) of Title 2 of Part 6.
- (20) Civil remedies and resources available to victims, including, but not limited to, the program administered by the California Victim Compensation Board.
- (21) The complete contents of any model policy on senior and disability victimization that the Commission on Peace Officer Standards and Training may develop based on this section, regardless of whether that model policy includes items in addition to those listed in this section.
- (22) Use of the full term “elder and dependent adult abuse” in every reference to that crime, with no shorthand terms, including, but not limited to, “elder abuse” or “adult abuse.”
- (23) A detailed checklist of first-responding officers’ responsibilities, including, but not limited to, all of the following:
- (A) Taking responsibility for the safety and well-being of the potential victims and witnesses and treating all potential victims, witnesses, and suspects with dignity and respect.
 - (B) Complying with the provisions of the agency’s policy requirements for arrests and mandatory seeking of arrest warrants pursuant to paragraph (9) and the requirements for seeking emergency protective orders pursuant to paragraph (17).
 - (C) Following the policy’s guidelines for interviewing persons with cognitive or communication disabilities pursuant to paragraph (15).
 - (D) Recognizing that some elders and adults and children with cognitive or communication disabilities may have difficulty narrating events, appearing to be poor historians, or lack short-term memory, which adds to their vulnerability and therefore requires officers to make special efforts to provide them with equal protection.
 - (E) Documenting the scene.
 - (F) Obtaining a signed medical release from potential victims.

- (G) Interviewing caretakers separately, recognizing that in some cases, the caretaker is the perpetrator.
 - (H) Recognizing that victim cooperation is sometimes unnecessary for prosecution, and that in some cases allowing victims the option of preventing prosecution creates an opportunity for the perpetrators to obstruct justice by pressuring or threatening the victims. Each dispatch call or case should be investigated on its own evidential merits.
 - (I) Taking other actions necessary to comply with the provisions of the law enforcement agency's policy pursuant to this section.
- (24) The relevant content of any memoranda of understanding or similar agreements or procedures for cooperating with other responsible agencies, consistent with Penal Code section 368.5.
- (25) A statement of the agency chief executive's responsibilities, including, but not limited to, all of the following:
- (A) Taking leadership within the agency and in the community, including by speaking out publicly in major cases of senior and disability victimization, to assure the community of the agency's support for victims and their families and for others in the community who are terrorized and traumatized by the crimes, and to encourage victims and witnesses to the crimes or similar past or future crimes to report those crimes to help bring the perpetrators to justice and prevent further crimes.
 - (B) Carrying out specific responsibilities pursuant to this subdivision, including, but not limited to, developing and including agency protocols in this policy.
 - (C) Ensuring that all officers and staff carry out their responsibilities under the policy.
- (26) An agency protocol for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.
- (27) (A) A requirement that all officers be familiar with the policy and carry out the policy at all times except in the case of unusual compelling circumstances as determined by the agency's chief executive or by another supervisory or command-level officer designated by the chief executive.
- (B) A responsible officer who makes a determination allowing a deviation from the policy shall produce a report to the agency's chief executive stating the unusual compelling circumstances. The policy shall include an agency protocol for providing copies of those reports to the alleged victims and reporting parties. The chief executive shall retain the report for a minimum of five years and shall make it available to the state

protection and advocacy agency upon request.

- (28) For each agency protocol, either a specific title-by-title list of officers' responsibilities, or a specific office or unit in the law enforcement agency responsible for implementing the protocol.

Policies adopted or revised on or after April 13, 2021 must be made available to the state protection and advocacy agency upon request. (Pen. Code, § 368.6, subd. (d).) The current designated state protection and advocacy agency is Disability Rights California (DRC).

2. Agencies Must Include the 28 Items in All Adopted Senior and Disability Victimization Policies and All Policies Revised After April 13, 2021

Senate Bill 338's 28-item requirement applies any time an agency adopts a senior and disability victimization policy, or when an agency revises its existing senior and disability victimization policy, including revisions made pursuant to Penal Code section 368.5, on or after April 13, 2021. (Pen. Code, § 368.6, subd. (c); Cal. Assem. Bill 751 (2022-2023 Reg. Sess.) § 2 (adding Penal Code, § 368.6, subd. (e) to clarify that: "A law enforcement agency that adopts, revises, or has adopted or revised a policy regarding elder and dependent adult abuse in compliance with the requirements of Section 368.5 on or after April 13, 2021, shall also comply with the requirements of subdivision (c) and (d) of this section".)

Suggested Protocol to Comply with Senate Bill 338

Local law enforcement agencies that adopt a senior and disability victimization policy should ensure that they comply with the requirements of Penal Code section 368.6.

Agencies with an existing senior and disability victimization policy should review it to determine whether the policy includes each of the 28 items listed in Penal Code section 368.6. If an agency updated its policy on or after April 13, 2021 and any of the 28 items are missing, an agency should revise its policy to include those missing items. If an agency has not yet revised its policy, we encourage you to consider doing so.

This Information Bulletin does not create or confer any rights for or on any person or entity, nor does it impose any requirements beyond those required under applicable law and regulations. For questions about this Information Bulletin, please contact Division of Law Enforcement Chief John Marsh at (916) 210-6300.