

1

PENAL CODE 368(b)(1)
PHYSICAL/EMOTIONAL ABUSE OR NEGLECT
Calcrim 830

2-3-4 PRISON wobbler

- 1A** Willfully inflicted unjustifiable physical pain or mental suffering
- 2** Under circumstances likely to cause great bodily harm or death
- 3** V was an elder/dependent adult (E/DA)
- 4** When D acted, D knew or reasonably should have known that V was an E/DA

2

PENAL CODE 368(b)(1)
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2-3-4 PRISON wobbler

- 1D** While having care or custody of V willfully caused or permitted V to be placed in a situation where his/her person or health was endangered unjustifiable physical pain or mental suffering
- 2** D inflicted suffering on/caused or permitted V to suffer/be injured/be endangered under circumstances or conditions likely to cause great bodily harm or death
- 3** V was an elder/dependent adult (E/DA)
- 4** When D acted, D knew or reasonably should have known that V was an E/DA
- 5** D was **criminally negligent** when D caused or permitted V to suffer/be injured/be endangered

3

**PENAL CODE 368(b)(1)
PHYSICAL/EMOTIONAL ABUSE OR NEGLECT
Calcrim 830**

*2-3-4
PRISON
wobbler*

Unjustifiable physical pain or mental suffering is pain or suffering that is not reasonably necessary or is excessive under the circumstances

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:

1. S/he acts in a reckless way that creates a high risk of death or great bodily harm; AND
2. A reasonable person would have known that acting in that way would create such a risk

4

The Case

5

RIVERSIDE SHERIFF'S OFFICE

- 7/10/21, 1159 hrs – Dispatched to a second story apt
- Several neighbors called 911 that a small child was dangling from a 2nd story balcony within an apt complex
- Child was screaming and yelling for help
- Deputy saw a 4y old standing on the top of the balcony barrier – 18ft from ground
- CA Dept of Fire - ladder to safely rescue

6

INSIDE THE APARTMENT, CDF CONDUCTED A SAFETY SWEEP

7

PRELIMINARY HEARING WITNESSES

- Custodian of Records for IHSS
- APS Social Worker Alisha Willett
- Responding RSO deputies



8

ADULT PROTECTIVE SERVICES (APS)


- Serves individuals ages 60 & older or dependent adults Ages 18-59
- Types of Abuse
 - Physical
 - Sexual
 - Financial
 - Psychological
 - Self-Neglect
 - Neglect
 - Isolation
 - Abandonment
 - Abduction



9

APS INVESTIGATION PROCESS


- Report received via phone or online portal
 - SDM Response times: Immediate (<2hrs), 24 hours, 2-5 days, 10 days
 - Cross-report
- Assigned to district office APS social worker
- **Social Worker contacts reporting party**



10

APS INVESTIGATION PROCESS

- Home visit by social worker
 - Conduct full risk assessment
 - Collect evidence
 - Resource Connection/Referrals
- Stabilize client/victim's situation
- Determine findings
 - Cross-report
- Close APS case



11

IN-HOME SUPPORTIVE SERVICES (IHSS)

“...provides assistance to those eligible aged, blind and disabled individuals who are unable to remain safely in their own homes without assistance. IHSS is an alternative to out-of-home care.”

MPP 30-700.1

12

IN-HOME SUPPORTIVE SERVICES (IHSS)

- Caregiver hours determined by IHSS social worker during home visit
 - Initial home visit within 30 days
 - Yearly home visits thereafter
- Max. caregiver hours are 283 hours/mo. & pay is \$15.50/hour (min. wage)
- Client chooses caregiver / Public Authority
 - Caregiver must complete background check & orientation

13

IHSS PROTECTIVE SUPERVISION

“Protective Supervision is available for observing the behavior of nonself-directing, confused, mentally impaired, or mentally ill persons only.”

MPP 30-757.171

14

IHSS PROTECTIVE SUPERVISION

• Eligibility Criteria

- Mental impairment/illness
- Non-self-directing
- Needs 24-hour supervision/intervention
 - Hours range from 195-283 hours/mo.
 - Paid out at \$15.50/hr for first 40hrs/wk, then \$23.25 for remaining hours
 - Requires “24-hour/day coverage plan”

15

TIMELINE OF EVENTS

- **7/10/2021 (Sat) 11:59am – Incident Occurs**
 - Police, Fire Dept, and EMT response
 - Victim transported to hospital
 - Defendant/caregiver detained
- **7/10/2021 9:33pm – APS report received**
- **7/13/2021 (Tue)**
 - DA Janet Hasegawa receives case
 - Staffs case with APS Social Worker (SW) Alisha Willett

16

TIMELINE OF EVENTS

- **7/13/2021 (Tue) Continued - APS SW Willett staffs case with hospital SW & IHSS SW**
- **7/14/2021 (Wed) - APS SW Willett conducts visit with victim at hospital**
- **7/16/2021 - Defendant released on bail \$35,000**
- **7/26/2021 – FSC & CPO granted**
- **7/27/2021 - CPO emailed to hospital**
- **8/3/2021 - Victim placed at a skilled nursing facility**
- **8/4/2021 - CPO emailed to skilled nursing facility**
- **11/29/2021 – PH; Negotiated Plea**

17

THE CRIMINAL PROTECTIVE ORDER

18

NEGOTIATED PLEA

19

SUBPOENAED DOCUMENTS

<p>HOSPITAL</p> <ul style="list-style-type: none"> Elder victim's mental diagnosis & treatment To prove she was neglected under circumstances likely to cause great bodily harm or death 	<p>DPSS-APS&IHSS</p> <ul style="list-style-type: none"> APS history here and in the past for V & D IHSS records to prove <ul style="list-style-type: none"> D care provider Hours of care Info that D was not to leave V unsupervised
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PROTECTIVE SUPERVISION (PS) (MPP 30-757.17)

20


IHSS RECORDS

- 3/18/2020 & 2/23/2021 – Reassessments were conducted by phone interview with caregiver/defendant due to pandemic**
- 9/30/2020 – Phone call between caregiver/defendant & IHSS Supervisor**
 - Reported changes in behavior due to Alzheimer's
 - Removes diapers
 - Defecates/urinates on self and bed
 - Removes clothes & dresses in granddaughter's clothing

21

CONSEQUENCES OF 368 CONVICTIONS


- **INELIGIBLE** to be an IHSS paid caregiver for 10 years
- **Probate Code 259(a)** - If a person is found liable for physical abuse, neglect, or fiduciary abuse of the decedent, who was an elder or dependent adult, that person also cannot inherit



22

KEY TAKE-AWAYS OF THIS CASE STUDY

- Roles of collaboration and communication
- Importance of documentation
- Common goal of keeping the client/victim safe



23



Thank you

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24
