

Date of Hearing: May 4, 2021

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 1243 (Blanca Rubio) – As Amended April 28, 2021

**SUBJECT:** PROTECTIVE ORDERS: ELDER AND DEPENDENT ADULTS

**KEY ISSUES:**

- 1) SHOULD AN INDIVIDUAL WITH A PREEXISTING, PERSONAL RELATIONSHIP WITH AN ELDER OR DEPENDENT ADULT BE ABLE TO OBTAIN A PROTECTIVE ORDER, AFTER A NOTICED HEARING, TO KEEP THAT ELDER OR DEPENDENT ADULT FROM BEING ISOLATED, PROVIDED THE ELDER OR DEPENDENT ADULT WANTS TO HAVE CONTACT WITH THE INDIVIDUAL?
- 2) IN ORDER TO BETTER PROTECT ELDER AND DEPENDENT ADULTS FROM FINANCIAL ABUSE, SHOULD A COURT BE ABLE TO FIND, AFTER A NOTICED HEARING, THAT CERTAIN DEBTS OF THE ELDER OR DEPENDENT ADULT WERE THE RESULT OF ABUSE?

**SYNOPSIS**

*The Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) was enacted to protect elder and dependent adults from abuse and exploitation. (Welfare & Institutions Code Section 15600 et seq.) EADACPA recognizes that elders and dependent adults may have disabilities and cognitive impairments, such as Alzheimer's disease and other dementia disorders, which often leave them incapable of seeking help and protection from others; and that elders and dependent adults suffer physical impairments and poor health, conditions that place them in a dependent and vulnerable position. Further, legislative findings codified in EADACPA state that cases of elder and dependent adult abuse are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to bring these actions. Under EADACPA, an action may be brought to protect an elder or dependent adult from abuse, which is defined broadly to include physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering; and financial abuse. (Welfare & Institutions Code Section 15610.07.)*

*This bill, sponsored by Bet Tzedek, Justice in Aging, and the Public Law Center, seeks to expand EADACPA in two ways to alleviate abuse that has been exacerbated by the COVID-19 pandemic. First, in order to prevent isolation, the bill allows anyone who has a preexisting, personal relationship with an elder or dependent adult to seek a restraining order, after notice and a hearing, to prevent the isolation of the elder or dependent adult and allow the petitioner to visit with that adult. The bill makes clear that the adult must want to visit with the petitioner and that the incidents of isolation must have been repeated. Second, the bill allows a court, also after notice and a hearing, to make a finding that specific debts were incurred as the result of financial abuse of the elder or dependent adult by the respondent. This provision is modeled after last year's AB 2517 (Gloria), Chap. 245, Stats. 2020, which established the same findings for victims of domestic violence under the Family Code.*

*The bill is supported by California Low-Income Consumer Coalition, Jewish Public Affairs Committee, Public Counsel, and Wise & Healthy Aging, who state that: "During the pandemic, issues of isolation and financial elder abuse have been all too common. AB 1243 addresses both of those issues, ensuring that some of the most vulnerable Californians have the ability to prevent and recover from physical, emotional, and financial abuse. AB 1243 will provide vulnerable older and dependent adults the freedom to connect and communicate with their loved ones as well as protection from paying debts that were the result of coercion." California Lawyers Association – Trusts and Estates Section supports the bill if amended to delete the financial abuse debt finding. There is no reported opposition.*

**SUMMARY:** Allows, after notice and a hearing, an interested party to seek a protective order for isolation of an elder or dependent adult under the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) and for the court to make a finding that specific debt was incurred as the result of financial abuse of the elder or dependent adult. Specifically, **this bill:**

- 1) Provides that, if an elder or dependent adult abuse petition under EADACPA alleges isolation as the form of abuse, the petition may be brought by an individual with a personal, preexisting relationship with the elder or dependent adult. Provides that the preexisting relationship may be shown by a description of past involvement with the elder or dependent adult, time spent together, and any other proof that the individual spent time with the elder or dependent adult.
- 2) Allows an order enjoining a party from abusing an elder or dependent adult by isolating them, issued after notice and a hearing, to restrain the respondent from a reoccurrence of isolation if the court finds, by a preponderance of the evidence, to the satisfaction of the court, all of the following:
  - a) The respondent's past acts of isolation of the elder or dependent adult repeatedly prevented contact with the interested party;
  - b) The elder or dependent adult expressly desires contact with the interested party; and
  - c) The respondent's isolation of the elder or dependent adult from the interested party was not in response to actual or threatened abuse of the elder or dependent adult by the interested party or the elder or dependent adult's desire not to have contact with the interested party.
- 3) Allows an order issued under 2) to specify actions to be enjoined, including enjoining the respondent from preventing in-person or remote, online visits with the elder or dependent adult.
- 4) Provides that an order enjoining isolation under 2) is not required for an elder or dependent adult to visit with anyone with whom the elder or dependent adult desires visitation.
- 5) Prohibits an order enjoining isolation under 2) from being issued if the elder or dependent adult resides in a long-term care facility or a residential facility, both as defined, or is a patient of a health facility, as defined.
- 6) Allows a protective order, issued after notice and a hearing to prevent elder or dependent adult abuse, to include a finding that specific debts were incurred as the result of financial

abuse of the elder or dependent adult by the respondent. Provides that acts that support this finding may include, but are not limited to, obtaining a party's personal identifying information and using it for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person. Provides that the finding does not affect the priority of any lien or other security interest, nor does it entitle the petitioner to any remedies other than those actually set for in the protective order statute.

- 7) Provides that the following requirements do not apply if the protective order was made solely on the basis of isolation unaccompanied by force, threat, harassment, intimidation, or any other form of abuse:
  - a) That protective orders be transmitted to the Department of Justice to be entered into the California Law Enforcement Telecommunications System (CLETS); and
  - b) That persons subject to the protective orders may not own, possess, purchase, receive, or attempt to receive a firearm or ammunition while the protective order is in effect.
- 8) States the intent of the Legislature to preserve the physical and mental health of vulnerable Californians and protect against isolation, especially during the COVID-19 pandemic. States that the Legislature finds and declares that, among other things, when perpetrators of domestic violence isolate a vulnerable adult they allow the perpetrator to potentially take over finances and hide any indications that they are doing so. States the intent of the Legislature that this bill ensure that vulnerable adults are able to protect and preserve their physical and mental health by making certain that these vulnerable adults are able to maintain important familial and social connections that they desire, and that a perpetrator does not cut off those relationships in an attempt to take advantage of the vulnerable adult.

**EXISTING LAW:**

- 1) Establishes the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) to provide civil protections and remedies for victims of elder and dependent adult abuse and neglect. (Welfare & Institutions Code (WIC) Section 15600 *et seq.*)
- 2) Defines “abuse of an elder or a dependent adult” to include physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering; and financial abuse. (WIC Section 15610.07.)
- 3) Defines isolation as:
  - a) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving their mail or telephone calls;
  - b) 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 the dependent adult, whether they are 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;

- c) False imprisonment, as defined; or
  - d) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors. (WIC Section 15610.43.)
- 4) Provides that the acts set forth in 3), above, are subject to a rebuttable presumption that they do not constitute isolation if they are (a) performed pursuant to the instructions of a licensed physician who is caring for the elder or dependent adult at the time the instructions are given; or (b) performed in response to a reasonably perceived threat of danger to property or physical safety. (WIC Section 15610.43 (b), (c).)
  - 5) Provides that "financial abuse" occurs when a person takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both, or when a person assists another in that conduct. (WIC Section 15610.30 (a)(1) and (a)(2).)
  - 6) Permits an elder or dependent adult to bring a financial abuse civil action when real or personal property is taken or appropriated from the elder or dependent adult for a wrongful use or with intent to defraud, or both. (WIC Section 15657.5.)
  - 7) Allows an elder or dependent adult who has suffered abuse to seek a protective order. Allows the petition to be brought on behalf of the abused elder or dependent adult by a conservator, trustee, attorney-in-fact under a power of attorney, guardian ad litem, or other person legally authorized to seek the relief, or, as specified, by the adult protective services agency. Includes both temporary ex parte orders and orders after notice and a hearing. (WIC Section 15657.03.)
  - 8) Requires the court, where physical abuse or neglect of an elder or dependent adult is proven by clear and convincing evidence and the defendant has been found guilty of recklessness, oppression, fraud or malice in the commission of that abuse, to award reasonable attorney's fees and costs, as specified, and damages for pain and suffering up to \$250,000; and also requires, in order to receive any damages or attorney's fees against an employer, certain standards be satisfied. (WIC Section 15657 and Civil Code Section 3333.2.)
  - 9) Allows a family court, in an action brought under the Domestic Violence Prevention Act, after notice and a hearing, to issue an order determining the use, possession, and control of real or personal property of the parties during the period the order is in effect and the payment of any liens or encumbrances coming due during that period. Allows the order to include a finding that specific debts were incurred as the result of domestic violence and without the consent of a party. Provides that the acts that may support this finding include, but are not limited to, certain crimes. Provides that this finding does not affect the priority of any lien or other security interest. (Family Code Section 6342.5.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** The Elder Abuse and Dependent Adult Civil Protection Act was enacted to protect elder and dependent adults from abuse and exploitation. EADACPA recognizes that elders and dependent adults may have disabilities and cognitive impairments, such as Alzheimer's disease and other dementia disorders, which often leave them incapable of seeking help and protection from others; and that elders and dependent adults suffer physical

impairments and poor health, conditions that place them in a dependent and vulnerable position. Further, legislative findings codified in EADACPA state that cases of elder and dependent adult abuse are seldom prosecuted as criminal matters, and that few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to bring these actions.

Under EADACPA, an action may be brought to protect an elder or dependent adult from abuse, which is defined broadly to include physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering; and financial abuse. (WIC Section 15610.07.) This bill seeks to expand EADACPA in two ways to alleviate abuse that has been exacerbated by the COVID-19 pandemic. First, in order to prevent isolation, the bill allows anyone who has a preexisting, personal relationship with an elder or dependent adult to seek a restraining order, after notice and a hearing, to prevent the isolation of the elder or dependent adult and allow the petitioner to visit with the adult. The bill makes clear that the incidents of isolations must have been repeated and that the elder or dependent adult must want to visit with the petitioner. Second, the bill allows a court, also after notice and a hearing, to make a finding that specific debts were incurred as the result of financial abuse of the elder or dependent adult by the respondent. This provision is modeled after last year's AB 2517 (Gloria), Chap. 245, Stats. 2020, which established the same findings for victims of domestic violence under the Family Code.

The author writes that this bill seeks to better protect elder and dependent adults:

Due to the ongoing COVID-19 pandemic, visitation to vulnerable groups including elderly individuals has been limited to prevent/minimize exposure to the virus. For many families caring for relatives in community this meant little to no visitation outside of primary caregivers. AB 1243 helps prevent isolation of vulnerable Californians by allowing family members or other persons with a pre-existing relationship (as defined in the bill language) to petition the court through the existing elder and dependent adult abuse restraining order process for orders enjoining the isolation and allowing contact with the vulnerable adult **as long as the elder or dependent adult wants that contact**. This legislation specifically focuses on preventing isolation of elders and dependent adults living in the community with family or caregivers.

AB 1243 also provides an additional elder and dependent adult abuse restraining order remedy for financial abuse by extending AB 2517 (Gloria 2020) to allow judges issuing elder and dependent adult abuse restraining orders to make similar findings that specific debts are the result of coerced debt. This will give the protected party an additional tool to use when facing collection activity by creditors and collectors. They can use the coerced debt findings to dispute debts with creditors, collectors, and/or credit reporting agencies, which will protect their future income and facilitate their economic recovery.

***Isolation and financial abuse of elder and dependent adults.*** Elder abuse is a real and growing problem that ruins the lives of far too many vulnerable seniors. It is estimated that losses due to elder financial abuse are estimated to be \$36.5 billion a year. (National Council on Aging, *Get the Facts on Elder Abuse* (Feb. 23, 2021), available at <https://www.ncoa.org/article/get-the-facts-on-elder-abuse>.) Most abusers are family members, with two-thirds being adult children or spouses. Very few cases of elder abuse are ever reported (as few as one in 24). (*Ibid.*)

Isolation itself constitutes abuse, and also makes other forms of abuse, including financial abuse, more likely to occur. The bill's sponsors, Bet Tzedek, Justice in Aging and Public Law Center, write:

Elder abuse is much more prevalent than most of us realize; researchers who undertook a meta-analysis of studies on elder abuse worldwide found that approximately one in six adults over the age of 60 are survivors of abuse. The two most common forms of abuse found were psychological/emotional abuse, which includes isolation, and financial abuse. At least one study has found that 24% of community-dwelling adults were considered socially isolated. In addition, decreased community involvement leads to increased loneliness, which can make individuals more susceptible to scams and financial elder abuse. During the COVID-19 pandemic, we have seen increased isolation and loneliness within the older adult population, leading to concerns about the physical, emotional, and financial health of those individuals. (Footnotes omitted.)

Financial abuse can include controlling how an elder or dependent adult's money is spent, withholding money for basic family expenses, such as food, shelter and medicine, not allowing the victim access to bank accounts or make any financial decisions, running up large amounts of debt on joint accounts, and ruining victims' credit scores. An abuser can also create personal debt for their victim or force the victim to create the debt themselves, creating additional financial abuse and potentially causing long-term harm to the victim. Financial abuse of an elderly individual is much easier to accomplish if that individual is isolated from family and friends. And both isolation and the possibility of further abuse of isolated seniors has increased during the COVID-19 pandemic, when shutdown orders and health concerns kept seniors from their loved ones who might have been able to prevent abuse or detect it early if they had been able to be in closer contact with them.

***The enhanced remedies provision of EADACPA.*** In 1982, the Legislature enacted EADACPA, (WIC Section 15600 *et seq.*) and recognized that “elders and dependent adults may be subjected to abuse, neglect, or abandonment, and that this state has a responsibility to protect these persons.” (WIC Section 15600.) EADACPA defines “abuse of an elder or a dependent adult” to include physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering; and financial abuse. (WIC Section 15610.07.)

In 1991, SB 679 (Mello), Chap. 744, Stats. 1991, created enhanced remedies under EADACPA when it is proven by clear and convincing evidence that a defendant is liable for physical abuse or neglect of an elder or dependent adult and that the defendant had been guilty of recklessness, oppression, fraud or malice in the commission of the abuse. The enhanced remedies include access to attorney fees and certain damages that would have been otherwise prohibited, such as damages for pre-death pain and suffering up to \$250,000, even where the decedent dies before a judgment is handed down.

***Limiting the isolation of elder and dependent adults.*** The issue of forced isolation of elder and dependent adults, often by warring family members, has come up multiple times in this Committee. In 2015, in response to the high-profile cases of Casey Kasem and Peter Falk and their sparring family members, the Legislature passed AB 1085 (Gatto), Chap. 92, Stats. 2015, which authorized the court to issue an order that specifically grants a conservator the power to

enforce the conservatee's rights to receive visitors, telephone calls, and personal mail, or that directs the conservator to allow those visitors, telephone calls, and personal mail.

California law – both statutory and case law – currently provides limited guidance on how to address adult visitation cases when there is no conservatorship in place. Some courts in other states that addressed similar situations have found that adult children have a right to visit their infirm parent if the parent consents to the visitation. (*See, e.g., Granger v. Johnson* (1997) 367 A.2d 1062 (RI); *Smith v. Markham* (1996) 41 Va. Cir. 166.) But other state courts have not. (*See, e.g., Commonwealth v. Parks* (1978) 10 Pa. D. & C.3d 714.) In uncodified legislative intent accompanying AB 1085, the Legislature declared that “every adult in this state has the right to visit with, and receive mail and telephone or electronic communication from, whomever he or she so chooses, unless a court has specifically ordered otherwise.” (AB 1085, *supra*, Section 1.)

***This bill creates a protective order to limit isolation under EADACPA.*** This bill creates a remedy for isolation for elder and dependent adults who are not subject to conservatorships and who do not reside in a long-term care or residential facility or are not patients of a health facility. Under this bill, an individual who has a personal, preexisting relationship with an elder or dependent adult may seek a protective order under EADACPA, alleging that the elder or dependent adult is being abused by being isolated, and seeking to enjoin the isolation. The court may grant the protective order, after notice and a hearing, enjoining the respondent from isolating the elder or dependent adult if the court finds all of the following:

- The respondent's past acts of isolation of the elder or dependent adult repeatedly prevented contact with the interested party;
- The elder or dependent adult expressly desires contact with the interested party; and
- The respondent's isolation of the elder or dependent adult from the interested party was not in response to an actual or threatened abuse of the elder or dependent adult by the interested party or the elder or dependent adult's desire not to have contact with the interested party.

These conditions should help to ensure that the EADACPA protection orders are not themselves abused. The isolation cannot be a one-time event – a single phone hang-up or a one-time refusal to allow entrance into the house. The vulnerable adult must actually want the contact – no one can be forced to visit with their adult children. The contact cannot be withheld for a legitimate reason – to actually prevent abuse of the elder or dependent adult or because the elder or dependent adult does not want the contact.

Note, though not necessary, the bill states that an order enjoining isolation is *not* required for an elder or dependent adult to visit with anyone with whom the elder or dependent adult desires visitation. This goes without saying – as stated earlier, an adult, including an adult in a conservatorship (*see* Probate Code Section 2351), can visit with anyone they choose *unless* there is a court order that specifically prevents such visitation. They can also choose not to visit with anyone.

***This bill allows for findings about certain debt as part of a restraining order.*** Last year, the Legislature expanded the remedies available for a domestic violence protective order, issued after notice and a hearing, to include a finding that specific debts were incurred as the result of domestic violence and without the consent of one of the parties. (AB 2517 (Gloria), Chap. 245,

Stats. 2020.) That bill specifically provided that acts that support such a finding can include, but are not limited to, obtaining a party's personal identifying information and using it for any unlawful purpose, such as an abuser getting a credit card in their victim's name without the victim's consent.

This bill creates the possibility for the same finding in a protective order under EADACPA. This bill mirrors the language of AB 2517 and allows a protective order, issued after notice and a hearing to prevent elder or dependent adult abuse, to include a finding that specific debts were incurred as the result of financial abuse of the elder or dependent adult by the respondent. Acts that support the finding are the same as under AB 2517, and, like AB 2517, the court finding will not affect the priority of any lien or other security interest. This bill also adds that the finding does not entitle the petitioner to any remedies other than those actually set forth in the protective order statute.

Used together with the relief provided to victims of identity theft in Civil Code Section 1798.93, this should help protect elder or dependent adult abuse victims from third parties who go after them to collect on debt that was unlawfully established in their name. This is broad relief that should help provide protection, from third-party creditors, for victims of financial abuse whose abusers have stolen their identity and established debt in their names. This will help these victims (and possibly their heirs) regain their economic security.

***ARGUMENTS IN SUPPORT:*** Public interest supporters write in a group letter:

The two most common forms of elder and dependent adult abuse are isolation and financial abuse. Isolation is a form of elder abuse defined in Welfare & Institutions Code §15657.03 and includes blocking visitors, ignoring phone calls, and destroying mail. Older and dependent adults suffer physical, emotional, and mental harm when a third-party caregiver or family member isolates a vulnerable adult. In 2015, California adopted legislation affirming the right of a conserved elder or dependent adult to visit with whomever they choose, but that law did not address situations in which the older adult is not a conservatee. There are many situations where the same issues arise, but a conservatorship is not appropriate. AB 1243 will allow, in appropriate situations and when the protected party has expressed a desire to have contact, a third party with a preexisting relationship to have contact with the protected person.

Older adults are also frequently targeted by scams and frauds, leading to additional distress and financial struggle. Frequently, vulnerable adults' credit is used, and accounts are taken out in their names, without their knowledge or permission. AB 2517 (Gloria) (2020) allows judges issuing domestic violence restraining orders to order that a particular debt is "coerced debt" in domestic violence restraining order cases, but it does not include elder and dependent adult abuse restraining orders. AB 1243 will extend those protections to elder and dependent adult restraining orders, which will provide the protected party with an additional tool to use when facing collection activity on that particular debt.

During the pandemic, issues of isolation and financial elder abuse have been all too common. AB 1243 addresses both of those issues, ensuring that some of the most vulnerable Californians have the ability to prevent and recover from physical, emotional, and financial abuse. AB 1243 will provide vulnerable older and dependent adults the freedom to connect and communicate with their loved ones as well as protection from paying debts that were the result of coercion.



The Trusts & Estates Section of the California Lawyers Association (TEXCOM) would support the bill if it were amended to remove the financial abuse findings. TEXCOM writes that the protection order to prevent isolation “may be a streamlined and less restrictive alternative than a court-supervised conservatorship of the elder’s person and/or estate.” However, TEXCOM thinks the permissive findings as to debt are not needed because EADACPA already provides robust remedies for financial abuse and it is unclear how this provision would work with the other provisions of EADACPA.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Bet Tzedek (co-sponsor)  
Justice in Aging (co-sponsor)  
Public Law Center (co-sponsor)  
California Elder Justice Coalition  
California Low-Income Consumer Coalition  
California Long-Term Care Ombudsman Association  
California Lawyers Association – Trusts and Estates Section (if amended)  
Jewish Public Affairs Committee  
Public Counsel  
Wise & Healthy Aging

**Opposition**

None on file

**Analysis Prepared by:** Leora Gershenzon / JUD. / (916) 319-2334