
THIRD READING

Bill No: AB 1243
Author: Blanca Rubio (D), et al.
Amended: 8/26/21 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 7/13/21
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird,
Skinner, Stern, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 76-0, 5/24/21 - See last page for vote

SUBJECT: Protective orders: elder and dependent adults

SOURCE: Bet Tzedek Legal Services
Justice in Aging
Public Law Center

DIGEST: This bill provides that restraining orders for elder or dependent adults may include certain remedies related to financial abuse or isolation, as specified.

ANALYSIS:

Existing law:

- 1) Establishes the Elder Abuse and Dependent Adult Civil Protection Act (Act). (Welf. & Inst. Code § 15600 et seq.)¹ Recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that California has a responsibility to protect those persons. (§ 15600(a).) States that the purposes of the Act are to do the following:

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

- a) Require health practitioners, care custodians, clergy members, and employees of county adult protective services agencies and local law enforcement agencies to report known or suspected cases of abuse of elders and dependent adults and to encourage community members in general to make such reports;
 - b) Collect information on the numbers of abuse victims, circumstances surrounding the act of abuse, and other data that will aid the state in establishing adequate services to aid all victims of abuse in a timely, compassionate manner; and
 - c) Provide for protection under the law for all those persons who report suspected cases of abuse, provided that the report is not made with malicious intent. (§ 15601.)
- 2) Provides that acts of abuse 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. (Welf. & Inst. Code § 15610.07.)
- 3) Defines “isolation” as any of the following:
- a) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
 - 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 he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.
 - c) False imprisonment, as defined.
 - d) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors. (§ 15610.43)
- 4) Provides that an elder or dependent adult who has suffered abuse may seek a protective order. Specifies that a petition for a protective order may be brought on behalf of the individual by a conservator, trustee, attorney-in-fact, guardian ad litem, or other person legally authorized to seek relief. Additionally

provides that a county adult protective services agency may bring such an action in specified circumstances. (§ 15657.03(a).)

- 5) Provides that the protective order may be issued to:
 - a) Enjoin a party from specified abuse, stalking, harassment and other related conduct, as provided;
 - b) Exclude a party from the person's residence or dwelling, as specified; or
 - c) Enjoin a party from specified behavior that the court determines necessary to effectuate orders described above. (*Id.* at (b)(4).)
- 6) Provides that the court may issue, upon notice and a hearing, any of the orders described above, which may last up to five years and may be renewed for either five years or permanently, as provided.

This bill:

- 1) Finds and declares:
 - a) It is the intent of the Legislature to prevent domestic violence, including elder and dependent adult abuse, and particularly to preserve the physical and mental health of vulnerable Californians. During the COVID-19 pandemic, one of the biggest threats to vulnerable adults' mental health, and sometimes physical health, has been isolation. The typical protections against isolation that might exist, including community or senior centers, libraries, support groups, banks, and even some delivery services, either are not available or are not operated in the same way as they were before the pandemic.
 - b) One way perpetrators of domestic violence, including elder and dependent adult abuse, are able to continue with their abuse is by preventing trusted friends and family members from seeing or contacting a vulnerable adult. As the vulnerable adult is isolated, it becomes more and more difficult for others to identify signs of abuse. The isolation also allows the perpetrator to potentially take over finances and hide any indications that they are doing so. The pandemic and resulting stay-at-home orders, as well as older adults' vulnerability to COVID-19, have amplified the need for additional protections, as well as creative ways to ensure older adults remain connected to their communities. A court order is not required for an elder or dependent adult to engage in visitation from anyone from whom the elder or dependent adult desires visitation.

- c) It is extremely important that the health and well-being of a vulnerable adult be front and center in any decision affecting them.
 - d) Changes made by the bill are intended to 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.
- 2) Provides that a protective order may be issued, after notice and a hearing only, to make a finding that specific debts were incurred as a result of financial abuse of the elder or dependent adult by the respondent, as specified. Provides that a finding that a particular debt was incurred as a result of financial abuse of the elder or dependent adult does not entitle the petitioner to any remedies other than those actually set forth in the protective order statute. Provides that such a finding does not affect the priority of any lien or other security interest.
 - 3) Provides that if the petition alleges abuse of an elder or dependent adult in the form of isolation, a petition for an elder abuse restraining order may be brought by an “interested party,” which is defined as an individual with a personal, preexisting relationship with the elder or dependent adult. A 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.
 - 4) Provides that a protective order may be issued, after notice and a hearing only, to enjoin a party from abusing an elder or dependent adult by isolating them. Provides that an order may be issued to restrain the respondent for the purpose of preventing recurrence of isolation if the court finds by a preponderance of the evidence that the following requirements are met:
 - a) The respondent’s past act or acts of isolation repeatedly prevented contact with the interested party.
 - b) The elder or dependent adult expressly desires contact with the interested party. Requires a court to use all means at its disposal to determine whether the elder or dependent adult desires contact with the person and has the capacity to consent to that contact.
 - c) 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.

- 5) Provides that the order may specify the actions to be enjoined, including enjoining the respondent from preventing the interested party from in-person or remote online visits with the elder or dependent adult, including telephone and online contact.
- 6) Provides that an order enjoining isolation under this section is not required for an elder or dependent adult to visit with anyone with whom the elder or dependent adult desires visitation.
- 7) Specifies circumstances in which these provisions do not apply because the elder or dependent adult resides in certain facilities for which other actions are may be taken under appropriate state or federal laws.
- 8) Provides that a protective order based solely on isolation does not trigger the requirements under Family Code section 6380 to transmit specified information to the California Law Enforcement Telecommunications System, which is a data interchange system managed by the California Department of Justice to compile background information for law enforcement purposes.
- 9) Requires the Judicial Council, on or before February 1, 2023, to revise or promulgate forms as necessary to implement changes made by the bill.
- 10) Becomes operative January 1, 2023.

Comments

The California Legislature, recognizing the need for special protection for California's vulnerable elder and dependent adult population, has enacted significant criminal and civil protections for elders and dependent adults. In 1983, the Legislature established enhanced criminal penalties against individuals who perpetrate crimes, including great bodily harm, infliction of pain, endangerment, and false imprisonment, against dependent adults. In 1986, the Legislature extended these protections to elders.

In 1992, the Legislature enacted SB 679 (Mello, Chapter 774, Statutes of 1991), which established the Elder Abuse and Dependent Adult Civil Protection Act (Act). The Act provides enhanced civil remedies to protect elders and dependent

adults who are victims of physical abuse, neglect, or financial abuse. The Act requires adult protective services agencies, local long-term care ombudsman programs, and local law enforcement agencies to receive referrals or complaints from public or private agencies, from any mandated reporter, or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered. (§ 15600 et seq.) The Act also requires these entities to take any actions necessary to protect the elder or dependent adult, correct the situation, and ensure the individual's safety. (§15600(i).)

Among the actions that may be taken to protect an elder or dependent adult who is an alleged victim of abuse is a petition to a court to issue a restraining order against the alleged abuser. Existing law provides that a petition for a protective order may be brought on behalf of the individual by any person legally authorized to seek relief or by a county adult protective services agency in certain circumstances. (§ 15657.03(a).) For these purposes, "abuse" includes 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. (§ 15610.07.)

This bill enables (1) courts, in issuing a restraining order for abuse of an elder or dependent adult to declare a specific debt was incurred as a result of financial abuse, and (2) an interested party, as defined, to seek an order restraining a party from abusing the elder or dependent adult by isolating them, as provided.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- The Department of Justice reports one-time workload costs of \$66,000 to update the California Restraining and Protective Order System to reflect the changes made by this measure. (General Fund)
- Unknown, potentially-significant workload cost pressures to the courts to adjudicate charges brought against individuals who are alleged to have violated a protective order by isolating an elder or dependent adult. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the

General Fund for insufficient revenue for trial court operations. (General Fund*)

*Trial Court Trust Fund

SUPPORT: (Verified 8/27/21)

Bet Tzedek Legal Services (co-source)

Justice in Aging (co-source)

Public Law Center (co-source)

California Advocates for Nursing Home Reform

California Commission on Aging

California Elder Justice Coalition

California Long-term Care Ombudsman Association

California Low-income Consumer Coalition

Jewish Public Affairs Committee

National Association of Social Workers, California Chapter

Public Counsel

Wise & Healthy Aging

OPPOSITION: (Verified 8/27/21)

None received

ARGUMENTS IN SUPPORT: The author writes:

Among the many adjustments to everyday life caused by COVID-19, 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. With so many choosing to keep their elderly loved ones at home to protect them from exposure and the increased COVID-19 death rates the state has seen in residential care facilities, it is incumbent on the state to ensure sheltering in place is the safest option by providing legal recourse that centers the rights of the elderly individual.

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.

ASSEMBLY FLOOR: 76-0, 5/24/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Bigelow, Flora

Prepared by: Josh Tosney / JUD. / (916) 651-4113
8/31/21 9:47:52

**** END ****