

## CONCURRENCE IN SENATE AMENDMENTS

AB 1243 (Blanca Rubio)

As Amended August 26, 2021

Majority vote

**SUMMARY**

Effective January 1, 2023, 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.

*Major Provisions*

- 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 requires the court to use all means at its disposal to determine whether the elder or dependent adult desires contact with the person and has capacity to consent to that contact; 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), above, 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), above, 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), above, 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) Requires Judicial Council, on or before February 1, 2023, to revise or promulgate forms as necessary to implement this bill.
- 9) 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.
- 10) Makes the bill effective January 1, 2023.

### **Senate Amendments**

Make this bill effective January 1, 2023; requires the court, in response to a petition for a protective order alleging isolation, 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; require Judicial Council to update forms, and make technical changes.

### **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. (Welfare and Institutions Code 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), Chapter 245, Statutes of 2020, which established the same findings for victims of domestic violence under the Family Code.

### **According to the Author**

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) [of] 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.

### **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 Section 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 and 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.

### **Arguments in Opposition**

No opposition on file.

## **FISCAL COMMENTS**

According to the Senate Appropriations Committee:

- 1) 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)
- 2) 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

**VOTES:****ASM JUDICIARY: 11-0-0**

**YES:** Stone, Gallagher, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Kiley, Maienschein, Reyes

**ASSEMBLY FLOOR: 76-0-2**

**YES:** 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

**ABS, ABST OR NV:** Bigelow, Flora

**SENATE FLOOR: 38-0-2**

**YES:** Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

**ABS, ABST OR NV:** Eggman, Stern

**UPDATED**

VERSION: August 26, 2021

CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334

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