

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1243 (Blanca Rubio)
Version: June 30, 2021
Hearing Date: July 13, 2021
Fiscal: No
Urgency: No
JT

SUBJECT

Protective orders: elder and dependent adults

DIGEST

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

EXECUTIVE SUMMARY

The Elder Abuse and Dependent Adult Civil Protection Act establishes procedures and requirements for the reporting, investigation, and prosecution of elder and dependent adult abuse. Under these provisions, a protective order may be sought to enjoin abuse of an elder or dependent adult.

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.

The bill is co-sponsored by Bet Tzedek Legal Services, Justice In Aging, and the Public Law Center, and is supported by several other groups. It has no known opposition.

PROPOSED CHANGES TO THE LAW

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

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

to protect those persons. (§ 15600(a).) States that the purposes of the Act are to do the following:

- 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) Becomes operative January 1, 2023.

COMMENTS

1. Author's statement

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.

2. Background

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, Ch. 774, Stats. 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.)

3. Seeks to protect elders and dependent adults from financial abuse and isolation

- a. *Enables a court issuing an elder or dependent adult abuse restraining order to make a finding that specific debts were the result of financial abuse*

Last session, the Legislature passed AB 2517 (Gloria, Ch. 245, Stats. 2020), which authorized courts to make a finding in a domestic violence restraining order issued after notice and a hearing that specific debts were incurred as a result of domestic violence, including the crime of identity theft under Penal Code section 530.5.² These provisions were intended to protect victims of domestic violence in the form of financial

² That section makes it a crime for a person to willfully obtain personal identifying information of another person and use that information for any unlawful purpose, including obtaining, or attempting to obtain, credit, goods, services, real property, or medical information without the consent of that person.

abuse, a key form of coercive control that the Legislature has recently brought into the ambit of domestic violence restraining orders via SB 1141 (Rubio, Ch. 248, Stats. 2020).

This bill would add similar provisions for elders and dependent adults who are found to be the victims of financial abuse by enabling the court, 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, including identity theft. The bill further 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. Finally, the bill provides that such a finding does not affect the priority of any lien or other security interest.

The sponsors argue: “This will give the protected party an additional tool to use when facing collection activity because they can use the coerced debt findings to dispute debts that were a result of abuse with creditors, collectors, and credit reporting agencies. This will protect their future income and facilitate their economic recovery.” They offer the following story of a couple’s coerced debt:

At their daughter’s urging, Bessie (age 87) and Hunter (age 101) sold their house and moved in with their daughter, son-in-law, and granddaughter. Unfortunately, this arrangement left Bessie and Hunter the victims of financial abuse and coerced debt. Their daughter and daughter’s family opened approximately five credit cards in Bessie and Hunter’s name, causing over \$70,000 in credit card debt. Bessie and Hunter only found out much later when creditors started contacting them to pay these overdue bills. Bessie’s daughter also persuaded Bessie to co-sign a loan for her daughter to purchase a mobile home. AB 1243 would allow a judge to make a finding of coerced debt that Bessie and Hunter could provide to the creditors.

While a finding pursuant to these provisions is binding as to the parties, a victim of financial abuse may need to take additional action to protect themselves against claims from creditors. Civil Code section 1798.93 provides that a victim of identity theft can bring an action against a claimant and is entitled to various forms of relief, including a declaration that the claim is void and unenforceable as against the victim. Section 1798.93 also provides for a civil penalty for up to \$30,000 if the victim establishes by clear and convincing evidence that the claimant continued to pursue their claim against the victim after being presented with facts that were later held to entitle the victim to a judgement under that section. A finding under these provisions that a specific debt was incurred as a result of domestic violence would be probative, if not determinative, in a proceeding under that section.

- b. Enables an interested party to seek an order restraining a party from abusing the elder or dependent adult by isolating them*

The bill would also authorize an interested person, on behalf of an elder or adult, to seek a restraining order, after notice and hearing, to enjoin a party from abusing an elder or dependent adult by isolating them. Under the bill, "interested party" 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.

The bill 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:

- The respondent's past act or acts of isolation repeatedly prevented contact with the interested party.
- 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.
- 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.

Writing in support, the California Commission on Aging states: "The story of an older adult isolated by a family member is all too common in the field of elder protection services. An adult child may move home to care for an ailing parent, helping to manage finances and resources in a situation that can easily become exploitative or abusive. The frequent next step is to prevent siblings or close friends from seeing or speaking with the older adult, even to check on their wellbeing."

The sponsors provide the following story of a client's attempts to contact an isolated family member:

Tim and his siblings always shared a close relationship. When Tim's brother Mike was diagnosed with early-onset Alzheimer's disease, the family wanted to spend as much time together as possible. When Tim and his siblings tried to call Mike, Mike never answered his phone. Later they found out that Mike's wife took away his phone. Tim and his siblings then tried calling Mike's wife to arrange visits with Mike, but even when she would initially agree, she would later callback to cancel these visits. Still, Tim and his siblings did not give up. They reached out to the priest at Mike's church to facilitate visitation and even considered conservatorship,

but wanted to avoid a legal battle with Mike's wife. When Covid changed the nature of visitation, Tim and his siblings suggested zoom visits or phone calls. Ultimately, Mike died without having seen or spoken to his siblings in over five months. AB 1243 would have provided the siblings with important connection and quality family time before Mike's passing.

These provisions are substantially similar to AB 2034 (Gatto, 2014), which would have authorized a first-degree relative to file a petition for a visitation order to enjoin a respondent from keeping an elder or dependent adult (proposed visatee) in isolation from contact with the petitioner. AB 2034 passed this Committee unanimously but died in the Senate Rules Committee.

4. Support

The California Long-Term Care Ombudsman Association writes:

Elder and dependent adult abuse restraining orders provide crucial protections for vulnerable Californians, including stay away and no-contact orders. AB 1243 will strengthen these protections by 1) giving family members and other persons with preexisting relationships the ability to contact older and dependent adults at risk of isolation, and 2) allowing judges to make findings that specific debts are coerced debt to help survivors recover from financial abuse.

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. Still, it did not address situations when the older adult is not also 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 contact, a third party with a preexisting relationship to contact the protected person.

Older adults are also frequently targeted by scams and frauds, leading to additional distress and financial struggle. Often, vulnerable adults' credit is used without permission, and accounts are taken out in their names without their knowledge or consent. AB 2517 (Gloria), passed in 2020, allows judges issuing domestic violence restraining orders to affirm that a particular debt is "coerced debt" in domestic violence restraining order

cases. Still, 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.

SUPPORT

Bet Tzedek Legal Services (co-sponsor)
Justice In Aging (co-sponsor)
Public Law Center (co-sponsor)
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

None known

RELATED LEGISLATION

Pending Legislation: AB 636 (Maienschein, 2021) authorizes confidential information from mandated reports relating to elder or dependent adult abuse to be shared with local code enforcement agencies and certain federal law enforcement agencies in limited circumstances. The bill passed this Committee on consent and is pending on the Senate floor.

Prior Legislation: *See* Comment 2.

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
