
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1191 **Hearing Date:** April 3, 2018
Author: Hueso
Version: February 15, 2018
Urgency: No **Fiscal:** Yes
Consultant: EC

Subject: *Crimes: Elder and Dependent Adult Abuse: Investigations*

HISTORY

Source: Coalition for Elder and Disability Rights

Prior Legislation: AB 2623 (Pan), Chaptered 823, Statutes of 2014
SB 110 (Liu), Chaptered 617, Statutes of 2010
AB 1819 (Shelley), Chaptered 559, Statutes of 2000

Support: Arc and United Cerebral Palsy California Collaboration; California Advocates for Nursing Home Reform; California Association for Health Services at Home; California Retired teachers Association; Disability Rights California; 2 Individuals

Opposition: None known

PURPOSE

The purpose of this bill is to require local law enforcement, adult protective service agencies, and long-term care ombudsman programs to revise their policy manuals to include references to existing elder and dependent adult abuse laws.

Existing law makes it a crime for a person, entrusted with the care of custody of any elder or dependent adult, to willfully cause the elder to be injured or permit them to be placed in a situation endangering their health. (Pen. Code § 368, subd. (b)(1).)

Existing law states that local and state law enforcement agencies with jurisdiction shall have concurrent jurisdiction to investigate elder and dependent adult abuse and all other crimes against elders and victims with disabilities. (Pen. Code § 368.5, subd. (a).)

Existing law states that adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect, and may assist local law enforcement agencies in criminal investigations at the law enforcement agencies' request, provided, however, that law enforcement agencies shall retain exclusive responsibility for criminal investigations, any provision of the law to the contrary notwithstanding. (Pen. Code § 368.5, subd. (b).)

This bill requires every local law enforcement agency, adult protective services agency, and long-term care ombudsman program, on or before July 1, 2019, to revise or include in the portion of its policy manual relating to elder and dependent adult abuse, the following information:

- That any person who knows that a person is an elder or dependent adult and who willfully causes or permit any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed \$2,000 or imprisonment in a county jail not to exceed one year, or both that fine and imprisonment pursuant to Penal Code section 368, subdivision (c);
- That any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment for two, three, or four years pursuant to Penal Code section 368, subdivision (f);
- That law enforcement agencies, have the responsibility for criminal investigations of elder and dependent adult abuse and criminal neglect, however, adult protective services and long-term care ombudsman programs have authority to investigate incidents of elder and dependent adult abuse and neglect and may, if requested, assist law enforcement agencies with criminal investigations pursuant to Penal Code section 368.5, subdivision (b); and,
- The Department of Justice’s definition of elder and dependent adult abuse: “Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.”

COMMENTS

1. Need for this Bill

The author states:

Senate Bill 1191 mandates that all law enforcement training and policy manuals include references to California Penal Codes 368 and 368.5 in order to help ensure that law enforcement jurisdictions enforce existing elder abuse laws. This would allow officers to better identify instances of elder abuse as crimes. This issue arises as a result of the frequent outsourcing of the task of writing officer policy manuals to private organizations such as Lexipol, LLC; that are contracted by law enforcement to draft training policies and manuals. Often these private organizations omit the above mentioned California Penal Codes entirely from law enforcement training and policy manuals; these omissions undermine the legislature’s intent.

2. Third Party Training Manuals and Training

Third party organizations provide state-specific, public safety policy content and training. Their services are provided to police, including airport, municipal, campus, port, and tribal officers, sheriff's departments, custody officers, detention center officers, district attorney offices, probation offices, state and federal agencies, and more.¹ Lexipol is California's leading officer training manual provider. The Lexipol system allows departments and agencies to customize policy manuals to update, change, and delete content. Lexipol also recommends that a person must allocate 50 to 60 hours for review and editing. The size and scope of departments and agencies which use Lexipol often varies.²

In 2014, Pan authored AB 2623 requiring police officers and deputy sheriffs to be trained in the legal rights and remedies available to victims of elder or dependent adult abuse, such as protective orders, simultaneous move-out orders, and temporary restraining orders. (Pen. Code § 13515, subd. (a).) The legislation also requires Peace Officers Standards and Training Council (POST) to consult with local adult protective services offices and the Office of State Long-Term Care Ombudsman when producing new or updated training materials. (Pen. Code § 13515, subd. (b)(1)-(3).)

3. Case Study on Elder Abuse and Training Manuals

In 2014-2015, Santa Clara County Grand Jury received a complaint regarding law enforcement's failure to apply California Penal Code 368 in investigating false imprisonment and forced isolation of elderly residents in San Jose. The San Jose Police Department reported, "It does not appear to me that this is a situation of criminal neglect matter". A Santa Clara County Deputy DA concurred stating, "This is a civil issue".³ However, existing law states that any person who willfully causes or permit any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is guilty of a misdemeanor. (Pen. Code § 368, subd. (c).) Additionally, any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment for two, three, or four years. (Pen. Code § 368, subd. (f).)

The Grand Jury reviewed law enforcement manuals, training materials, and the county's Elder Abuse Protocol. Out of twelve law enforcement agencies, only one police and sheriff's department manuals specifically referenced California Penal Code 368. The study showed that, across 12 counties, officer training manuals were inconsistent in their references to California Penal Code 368 and 368.5.

4. Argument in Support

According to the Coalition on Elder and Disability Rights:

Law enforcement officials typically lack policy on how to handle cases of the most common forms of elder and/or dependent adult abuse, which are isolation

¹ "Law Enforcement - FAQs," *Lexipol* (blog), accessed March 5, 2018, <http://www.lexipol.com/law-enforcement/law-enforcement-faqs/>.

² "Law Enforcement - Case Studies - Lexipol," accessed March 5, 2018, <http://www.lexipol.com/law-enforcement/law-enforcement-case-studies/>.

³ Robert Fettgather et al., "Elder Abuse as an Emerging Public Health Concern: Identifying Deficiencies in Law Enforcement Policy" (Coalition for Elder & Dependent Adult Rights, 2015).

and/or false imprisonment, that are currently taking place throughout California. When families, friends, associates, and/or advocates report abuse of elders and/or dependent adults, law enforcement often incorrectly responds that the abuse is a civil matter. Law enforcement's frequently response is "Sorry ma'am, this is a civil matter. You will have to hire an attorney and go to court." Courts consistently rule families don't have legal standing for civil remedies, during the victim's lifetime. The result is on-going and often escalating abuse until the victim dies. Upon death family can finally file civil remedies limited to monetary compensation. Family is never able to stop the abuse that was their primary goal.

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