

Date of Hearing: July 7, 2015

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Cheryl Brown, Chair

SB 196 (Hancock) – As Amended June 25, 2015

**SENATE VOTE:** 38-0

**SUBJECT:** Elder and dependent adult abuse: protective orders.

**SUMMARY:** SB 196 grants authority to Adult Protective Services (APS) program representatives to request protective orders for elder or dependent adults who have been physically abused, financially abused, or both; modernizes the definition of “abuse of an elder or dependent adult” to include financial abuse; and provides for delayed implementation six months after the bill goes into effect. Specifically, **this bill:**

- 1) Clarifies and streamlines the current definition of “elder and dependent adult abuse,” which currently includes a general reference to “financial abuse,” by consolidating definitions, and sunsetting the current definition on July 1, 2016.
- 2) Beginning on July 1, 2016, grants authority to APS program representatives to seek protective orders on behalf of elder or dependent adults who have experienced abuse, under two specific situations:
  - a. If an elder or dependent adult has been abused and has an impairment which may compromise the elder or dependent adult’s ability to understand and appreciate the abuse which they experienced.
  - b. If the elder or dependent adult has *granted* authority to the APS program to act on their behalf to assist in their protection.
- 3) Requires the APS program to refer the case to the public guardian, if not already referred.

**EXISTING LAW:**

- 1) Establishes the Elder and Dependent Adult Civil Protections Act (EADACPA) which recognizes:
  - a. That elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons;
  - b. That most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position;
  - c. That factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol;

- d. That this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this section;
  - e. That uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county; and,
  - f. That infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons 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 prosecute these suits.
- 2) Defines “Elder and Dependent Adult Abuse” within the Elder and Dependent Adult Civil Protections Act (Chapter 11 or Part 3 of Division 9 of the Welfare and Institutions Code) as either:
- a. Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; and,
  - b. The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.
- 3) Provides for a public guardian or public conservator to take possession or control of real or personal property of a person that is subject to loss, injury, waste, or misappropriation, and, may deny use of, access to, or prohibit residency in, the real or personal property, as specified.

**FISCAL EFFECT:** This measure has not been analyzed by a fiscal committee. SB 196 was not subject to review by the Senate Committee on Appropriations pursuant to Senate Rule 28.8.

**COMMENTS:**

- 1) **Author’s Statement:** “SB 196 was developed to provide a narrow ability for county Adult Protective Services agencies to file a petition for a protective order when a referral for conservatorship has been made, but there is a need to petition the court for an order in the meantime to step-in and stop abuse in the most egregious cases while the conservatorship process, which can be lengthy, is decided.

“Until a criminal case is filed, or a temporary conservatorship is in place, county agencies must rely on protective orders that are not adapted to the unique issues of adult abuse. Those protective orders include an Emergency Protective Order (EPO) or a restraining order (e.g. TRO, PRO). However, those orders are mainly designed to prevent physical harm in domestic violence or physical abuse. And in the case of restraining orders, it presumes the victim has the ability to initiate the request.

“Many elder abuse cases are not the result of domestic violence or physical abuse, but are instances of financial abuse. The victim is often unable to advocate on their behalf but has

not yet been conserved. In these cases, time can be of the essence in protecting assets and stopping the abuse. Lack of access to financial information and financial protective intervention measures are among the biggest existing holes in the tools for APS agencies. Situations have occurred where bank accounts and even homes are stolen out from under incapacitated or hospitalized elders and dependent adults.

“Cases of elder and dependent adult abuse are often complex. In many instances, it takes law enforcement officers and detectives several days or weeks to gather adequate evidence to file a case with the District Attorney’s office or a prosecutor. While the process of charges being filed and a criminal case initiated is being worked out, protective orders need to be available to prevent further abuse.

“Current law authorizes that a protective restraining order may be initiated by the victim or a petition may be brought on behalf of an abused elder or dependent adult by:

- a conservator or a trustee of the elder or dependent adult,
- an attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney,
- a person appointed as a guardian ad litem for the elder or dependent adult, or
- another person “legally authorized to seek such relief.”

“There is question regarding who qualifies under “another person legally authorized to seek such relief”. In fact, Counties realized that they weren’t sure, and it was being inconsistently interpreted, whether Adult Protective Services agencies are included.

“While it was recognized that the code needed to be clarified, it was also understood that it was not appropriate, nor did the counties want, to give Adult Protective Services this blanket authorization, especially when an elder or dependent adult simply does not want to seek the order. APS is a voluntary program today, and APS agencies would only step in under SB 196 in very narrow circumstances, preserving the voluntary nature of the program.

“SB 196 only applies when someone either asks for assistance or when the APS agency is confident enough that the individual has an impaired ability to understand the harm he or she is at risk of suffering, and a referral has been made to the public guardian for a conservatorship process to begin. These checks and balances guard against over-use of this provision.”

- 2) **EADACPA:** The Elder and Dependent Adult Civil Protection Act was established when the Legislature recognized that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that the state has a responsibility to protect them. In doing so, the Legislature statutorily declared a desire to direct special attention to the needs and problems of elder and dependent adults, recognizing that they constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment, and that mental and verbal limitations, physical impairments, place them in a dependent and vulnerable position, vulnerable to abuse and incapable of asking for help and protection. Therefore, the state has established statutory objectives to foster and promote community services for the economic, social, and personal well-being of its citizens. EADACPA further states that infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal

matters, and few civil cases are resolved due to problems of proof, court delays, and the lack of incentives to prosecute.

- 3) **APS:** Each county in California has an Adult Protective Services (APS) agency to help elder adults (65 years and older) and dependent adults (18-64 who are disabled), when they are unable to meet their own needs, or are victims of abuse, neglect or exploitation. County APS agencies investigate reports of abuse of elders and dependent adults who live in private homes, apartments, or hotels.

APS is the cornerstone of elder and dependent adult abuse prevention in California and fuses two simultaneous roles of addressing the needs of incapacitated and isolated adults living in communities, and addressing elder and dependent adult abuse and neglect. Since the passage of Title XX of the U.S. Social Security Act's Block Grants to states for Social Service and Elder Justice, interest has grown steadily as congressional and state legislative hearings have revealed the extent and depth of elder and dependent adult abuse and exploitation.

Adult Protective Services are voluntary, which means that generally, when clients refuse help or fail to cooperate in investigations, unlike child protective services (CPS), workers are obligated to respect their wishes. SB 196 focuses upon an exception to the general rule: when an adult is too impaired to protect themselves. In such cases, society can assume responsibility to protect them. Public agencies, as an example, can provide guardianship, and in extreme cases, involuntary protection in psychiatric settings for people who pose a threat to themselves or others. Police powers may also be authorized so that officers may intervene to stop or prevent harm, the loss of assets or property, and public nuisances. California remains somewhat behind the curve with regard to empowering APS to act in order to reduce the unnecessary impact of a growing cohort of increasingly vulnerable, older adults, and the corresponding increasing likelihood that they will impact agencies and systems of care, *as victims*. SB 196 offers a tool to APS, local government, and indirectly, the state to manage the person or the affairs of clients when the risk of abuse is clear and present.

- 4) **Recent Budget Action:** The Legislature recently advocated for, and achieved a \$1.25 million training budget for APS staff, including enhanced training days for new APS workers, curriculum development, and training for supervisors. Although APS was recently "realigned" (2011), the State remains legally responsible for the training of county-level APS workers. For comparison purposes, child welfare workers are allocated approximately \$7,333 per worker, per year, for training. APS workers are allocated less than \$350 per worker, per year. With additional complexities to APS duties proposed by SB 196, the legislature may wish to reassess whether training resources are adequate to accommodate county workers who may have significant capacity to reduce the impact upon a range of social and health services for which the state expends significant amounts of public resources.
- 5) **Support:** The California School Employees Association supports SB 196 because they acknowledge the mandate to protect elders and other dependent adults that APS has within communities, though the authorities which APS has to draw from are limited. SB 196 grants APS an important and timely tool to allow APS to take a leadership role and initiate a protective order, though the courts are still significantly involved in order to balance and check APS authority. The California Welfare Directors Association (CWDA) cites that when a conservatorship is sought, there is no authority to "act" upon the evidence and

material which instigated the conservatorship in the first place, forcing an incapacitated adult to endure abuse until the court has officially authorized conservatorship. This “gap” can be minimized or eliminated by SB 196. The National Association of Social Workers, California Chapter (NASW-CA) cites that existing protective orders were designed to address traditional domestic abuse situations, and are inadequate to address the unique issues associated with adult abuse where a victim is potentially incapable of sufficiently advocating on their own behalf.

6) ***Related Legislation:***

- AB 2034 (Gatto, 2014) 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 visitee) in isolation from contact with the petitioner. AB 2034 died in the Senate Rules Committee.
- AB 454 (Silva, Chapter 101, Statutes of 2011) added due process procedures regarding termination or modification of a protective order issued under the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA).
- AB 1596 (Hayashi, Chapter 572, Statutes of 2010) enacted recommendations from the Judicial Council’s Protective Orders Working Group for statutory procedural changes to the protective orders statutes and provided clarity and consistency for requests for protective orders.
- AB 225 (Beall, Chapter 480, Statutes of 2008) provided that an elder or dependent adult who petitions for a protective order under the EADACPA is not required to pay a fee for law enforcement to serve an order issued by the court.
- AB 1081 (Quirk, 2015), among other things, would authorize any party to an elder or dependent adult protective order proceeding to request a continuance of a hearing, as specified, and automatically extend a temporary protective order until the end of the continuance of the hearing. AB 1081 is currently on the Senate Floor.
- AB 494 (Maienschein, 2015), among other things, would authorize a court, in concert with the issuance of an elder or dependent adult protective order, to grant the petitioner exclusive care, possession, or control of an animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or household of the petitioner and order the respondent to stay away from the animal, as specified. AB 494 is currently on the Senate Floor.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

County Welfare Directors Association of California (CWDA) - Sponsor  
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO  
The Arc and United Cerebral Palsy California Collaboration  
California Association for Health Services at Home (CAHSAH)  
California Association of Public Authorities (CAPA)

California Commission on Aging  
California Communities United Institute  
California District Attorneys Association (CDAA)  
California Police Chiefs Association Inc.  
California School Employees Association (CSEA), AFL-CIO  
California State Association of Counties (CSAC)  
California State Retirees (CSR)  
Congress of California Seniors (CCS)  
LIUNA Locals 777 & 792  
National Association of Social Workers, California Chapter (NASW-CA)  
Santa Clara County Board of Supervisors  
Urban Counties Caucus (UCC)

**Opposition**

None on file.

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