

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Adrin Nazarian, Chair

AB 1396 (Obernolte) – As Amended April 10, 2019

**SUBJECT:** Protective orders: elder and dependent adults.

**SUMMARY:** Allows a court that is issuing a protective order after a noticed hearing in response to elder abuse to also issue an order requiring the restrained party to attend mandatory clinical counseling or court-approved anger management courses. Specifically, **this bill:**

- 1) Allows a court, when issuing a protective order for elder abuse involving physical abuse, neglect, abandonment, isolation, abduction, other treatment with resulting physical harm, pain, or mental suffering, or deprivation of goods or services that are necessary to avoid physical harm or mental suffering, to, after notice and a hearing, also issue an order requiring the restrained party to attend mandatory clinical counseling or court-approved anger management courses, when appropriate.
- 2) Requires the Judicial Council to revise or promulgate forms as necessary to effectuate these provisions.
- 3) Requires courts, in consultation with local elder abuse prevention programs, to develop a resource list of appropriate elder abuse prevention programs and services to provide to each person applying for a protective order for elder abuse.

**EXISTING LAW:**

- 1) Permits a court to issue a protective order in response to a request from an elder or dependent adult who has suffered abuse.
- 2) Defines “elder” to mean any person residing in this state who is 65 years of age or older.
- 3) Defines “abuse of an elder or a dependent adult”, as physical abuse, neglect, abandonment, isolation, abduction, other treatment resulting in physical harm, pain, or mental suffering, deprivation of goods or services that are necessary to avoid physical harm or mental suffering, or financial abuse.
- 4) Defines “protective order,” to mean an order, whether issued ex parte, after notice and hearing, or in a judgement, enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace of the petitioner and, on a showing of good cause, of other named family or household members or a conservator of the petitioner.
- 5) Permits a petition for a protective order, as specified, to be brought on behalf of an abused elder or dependent adult by a conservator or trustee, an attorney-in-fact who acts within the authority of a power of attorney, or a person appointed as a guardian, of the elder or dependent adult, or another person legally authorized to seek the relief.

- 6) Permits a petition for a protective order, as specified, to be brought on behalf of an elder or dependent adult by a county adult protective services agency if the elder or dependent adult has suffered abuse and has an impaired ability to appreciate and understand the circumstances that place them at risk of harm, or if the elder or dependent adult has provided written authorization to a county adult protective services agency to act on that person's behalf.
- 7) Provides that protective orders in response to elder abuse may be issued, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse.
- 8) Provides that a hearing on a protective order in response to elder abuse shall be held within 21 days of the granting or denial of a request for a temporary restraining order, or, if a temporary restraining order is not requested, within 21 days of the filing of the petition.
- 9) Requires, as a term of probation for a perpetrator of criminal domestic violence, the successful completion of a batterer's program, as defined, or, if none is available, another appropriate counseling program designated by the court, for a period not less than one year.
- 10) Allows a court, after notice and a hearing, to issue an order requiring the party restrained by a domestic violence protective order to participate in a batterer's program approved by the probation department.
- 11) Requires the courts, in consultation with local domestic violence shelters and programs, to develop a resource list of referrals to appropriate community domestic violence programs and services to be provided to each applicant for a protective order in response to domestic violence.
- 12) Provides that any intentional and knowing violation of a protective order is a misdemeanor punishable by:
  - a) A fine of not more than \$1,000, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. (Penal Code Section 273.6 (a).)
  - b) A fine of not more than \$2,000, or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment, in the event that a violation results in physical injury. (Penal Code Section 273.6 (b).)

**FISCAL EFFECT:** This bill has not yet been analyzed by a fiscal committee.

**COMMENTS:**

According to the author, "Elder abuse is similar to domestic violence in that in almost 60% of elder abuse and neglect incidents, the perpetrator is a family member. AB 1396 would help to prevent ongoing elder abuse by giving judges the option of ordering the restrained party in an Elder Abuse Restraining Order to attend clinical counseling or anger management courses similar to those that are currently mandated in cases of domestic violence, therefore providing judges another tool to help prevent ongoing elder abuse."

***Elder abuse is a significant, and growing, public health concern.*** Elder abuse is a significant public health issue both nationally and in the State of California that involves physical harm,

pain, or mental suffering, the deprivation of goods or services that are necessary to avoid physical harm or mental suffering, or financial abuse of adults aged 65 or over. Approximately one in six Americans aged 60 or over living outside of institutions have reported experiencing some form of abuse in the past year, and this figure likely omits the vast majority of elder abuse cases which go unreported. By 2030, nearly 20% of the United States population is expected to be aged 65 or older, and the California Department of Finance projects that the elderly population of California in 2030 will have increased by 87% from 2012. With a rapidly growing elderly population, the public health costs of elder abuse are likely to increase dramatically, making it more important than ever to take action toward reducing the prevalence of elder abuse. Victims of elder abuse, in addition to often long-lasting physical, psychological, and financial trauma, are over twice as likely to die prematurely as those who have not been abused.

**REGISTERED SUPPORT / OPPOSITION:****Support**

None on file.

**Opposition**

None on file.

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