

Date of Hearing: June 19, 2018

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Ash Kalra, Chair

SB 1191 (Hueso) – As Amended May 24, 2018

**SENATE VOTE:** 38-0

**SUBJECT:** Crimes: elder and dependent adult abuse: investigations.

**SUMMARY:** Requires 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. Specifically, **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, if such a policy manual exist, the following information:

- 1) 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);
- 2) 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);
- 3) 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,
- 4) 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.”

**EXISTING LAW:**

- 1) 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.
- 2) 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.

- 3) Authorizes county adult protective services agencies and local long-term care ombudsman programs to investigate elder and dependent adult abuse, but grants law enforcement agencies the exclusive responsibility for criminal investigations.

**FISCAL EFFECT:** Pursuant to Senate Rule 28.8, this bill was not heard in Senate Appropriations Committee, it was ordered to the Consent Calendar.

**COMMENTS:**

According to the author, “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.”

***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. 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.

***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”.

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 policy 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.

***Argument in Support:*** The Riverside Sheriffs' Association states in their letter that the author has noted, "Most law enforcement jurisdictions have elder abuse policies that do not contain or reference California Penal Codes 368 and 368.5. As a result, police officers and other law enforcement officials usually lack training on how to handle cases of elder abuse and lack the ability to recognize when false imprisonment and forced isolation are taking place against elder dependent adults."

Their letter also states, "SB 1191 proposes to address this problem by requiring that all law enforcement training manuals and policies include the reference California Penal Codes 368 and 368.5 in order to better ensure that law enforcement jurisdictions are better equipped to enforce elder abuse laws."

***Argument in Opposition:*** None.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

The Arc and United Cerebral Palsy California Collaboration  
California Association for Health Services at Home (CAHSAH)  
California Retired Teachers Association (CalRTA)  
California Senior Legislature  
Coalition for Elder & Disability Rights (CEDAR)  
Crime Victims United of California  
Disability Rights California (DRC)  
Riverside Sheriffs' Association  
Spectrum Institute  
Nine individuals.

### **Opposition**

None on file.

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