
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2721 **Hearing Date:** June 14, 2016
Author: Rodriguez
Version: February 19, 2016
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *Elder and Dependent Adult Fraud: Informational Notice*

HISTORY

Source: Author

Prior Legislation: AB 3095 (Committee on Aging and Long-Term Care: Berg, Daucher, Levine and Lowenthal) – Ch. 893, Stats. 2004

Support: Unknown

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to require the Department of Justice to develop and distribute an informational notice that warns the public about elder and dependent adult fraud and provides information regarding how and where to file complaints.

Existing law defines "elder" as "any person who is 65 years of age or older." (Penal Code § 368, subd. (g).)

Existing law states that upon conviction of any felony it shall be considered a circumstance in aggravation in imposing the upper term if the victim of an offense is particularly vulnerable, or unable to defend himself or herself, due to age or significant disability. (Penal Code § 1170.85, subd. (b).)

Existing law specifies that any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:

- a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950; or

- b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Penal Code § 368, subd. (d).)

Existing law provides that any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:

- a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950; or By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Penal Code § 368, subd. (e).)

This bill requires the Department of Justice (DOJ) to develop and distribute an informational notice that warns the public about elder and dependent adult fraud and provides information regarding how and where to file complaints.

This bill also requires the notice to be made available on the Internet Web site of the Attorney General.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates

were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

Consumer fraud perpetrated against senior citizens is a very serious issue; it creates fear, difficulty and financial problems for the elderly. Worst of all, it victimizes them and robs them of their savings and their peace of mind. A recent study found that around thirty percent of complaints about consumer fraud come from senior citizens, along with just over a quarter of identity theft complaints. According to a national consumer group nearly a third of all telemarketing fraud victims are age 60 or older. Studies by AARP show that most of older fraud victims don't realize that the voice on the phone could belong to someone who is trying to steal their money.

Senior citizens are viewed as easy targets and the scams that target them come in many different forms. Some include scams about Medicare, funeral arrangements, and prescription drugs. In these scams, the perpetrator may pretend to be an official medical or government worker and ask for confidential details or payment. Many of these schemes are perpetrated through telemarketing and the Internet. The common thread that runs through almost all telemarketing and other scams is the demand for payment upfront. While California cannot constantly be there to keep our citizens safe, we can create an informational brochure to be distributed to retail outlets and banks that access money or sell financial instruments. AB 2721 will place vital information in locations where seniors typically access their funds when they are being scammed. The brochure will serve as a resource for seniors before they lose

scarce retirement dollars and a source of information to let them know where to report fraud and scams.

The California Department of Justice regularly issues consumer alerts warning consumers against scams. These alerts are generally public service announcements that are made in the media and on the DOJ website. Some past consumer alerts have included information on “A Roundup of Senior Citizen Scams Alert (grandparent scams, IRS, etc.) and Veteran Pension Poaching Scam Alert.” These are general broadcast alerts to the general population as a whole and do not provide needed information at the location where seniors withdraw or access money during a scam. The Department of Justice, by developing and distributed this informational about scams will help prevent dependent adult fraud and provides information regarding how and where to file complaints. The bill would also require the notice to be made available on the Internet Web site of the Attorney General.

2. Background

Over 44 million Americans, or nearly one in four seniors, are victims of elder abuse each year with a substantial proportion of it being financial abuse. The senior population loses a combined total of over \$36 billion every year due to fraud and financial abuse.¹ Every 10 seconds a senior in California is a victim of financial abuse, and over \$4.8 billion in assets are at stake every year in California. There are more residents over 65 in California than in any other state, and the state’s elderly population will almost double within the next 20 years from 3.7 million to more than 6.4 million according to the U.S. Census Bureau.²

Financial abuse is often committed by serial abusers who will come back again for money. For example, a senior who loses \$20 due to financial exploitation will go on to lose an average of \$2,000 to other scams in the course of five years.³ The typical profile of perpetrators is likely to be individuals who are between 40 and 59 years old with females being just as likely as males to be the perpetrator. The vast majority of perpetrators have a close relationship to victim, such as a caregiver, family member or friend where approximately two-thirds are family members of the victim,⁴ but these crimes also come from random individuals posing as sweepstakes, lottery or IRS representatives alongside romantic, healthcare, or magazine claims, among other scams.

The Federal Trade Commission says that fraud complaints to its offices by individuals 60 and older have risen at least 47 percent between 2012 and 2014, but it is difficult to know the actual amount of elderly fraud cases.⁵ Seniors are often deeply ashamed and humiliated after they have figured out that they have been scammed and consequently fail to report the crime or tell family members that they have been victims of elderly financial abuse. Research confirms that in New York State, only 1 in 44 cases of elderly financial abuse were actually reported.⁶ In California specifically, 1 in 100 incidents of elder financial abuse is actually reported.⁷

¹ <https://www.truelinkfinancial.com/research>

² <http://www.cwda.org/publication/anna-and-joe-importance-adult-protective-services-fight-against-elder-financial-abuse>

³ <http://www.forbes.com/sites/johnwasik/2016/05/04/how-to-beat-the-elder-financial-abuse-epidemic/#52e3645c72ea>

⁴ <http://www.cwda.org/publication/anna-and-joe-importance-adult-protective-services-fight-against-elder-financial-abuse>

⁵ <http://www.consumerreports.org/cro/consumer-protection/preventing-elder-abuse>

⁶ Ibid.

⁷ <http://www.cwda.org/publication/anna-and-joe-importance-adult-protective-services-fight-against-elder-financial-abuse>

A sample voicemail left by a fraudster goes as follows:

This is the Internal Revenue Service and this call is for you. The issue is extremely time sensitive. As soon as you receive this message, I need you to leave your work aside and dial the following number...this is Officer John Smith and I am working with the IRS. If you or your lawyer fails to return the call, then the only thing I can do is wish you good luck as this situation unfolds on you. Goodbye.

3. Legislative History and Intent of Elder Abuse

Elder abuse was identified as a discrete crime in 1986 and abuse of a dependent person was in 1984. Although the statute has been renumbered, the language originally stated:

Any person, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be placed in a situation in which his or her person or health is endangered is punishable by imprisonment in the county jail not exceeding one year or in state prison for two, three or four years. [Original Penal Code § 368, subd. (a) as cited in *People vs. Heitzman* (1994) 9 Cal.4th 189, 194]

In 1994, the California Supreme Court construed Penal Code Section 368 as requiring a tort grounded duty of care to save the statute from being unconstitutionally vague. The Court in *Heitzman* stated:

In 1983, the Legislature passed the state's first law focusing exclusively on those 65 years of age or older, requiring elder care custodians and other specified professionals to report instances of elder abuse. (Welfare & Institutions Code, § 9380- 9386, added by Stats. 1983, ch. 1273, § 2 and repealed by Stats. 1986, ch. 769, § 1.3, eff. Sept. 15, 1986.) That same year, Senate Bill No. 248, 1983-1984 Regular Session, was introduced at the request of the Santa Ana Police Department. An analysis of the bill prepared for the Senate Committee on the Judiciary indicates that the goal of the legislation was to aid in the prosecution of people who harm or neglect dependent adults. (Senate Committee on Judiciary, Analysis of Senate. Bill No. 248 (1983-1984 Reg. Sess.) p. 2.) According to this document, law enforcement agencies receiving reports concerning suspected abuse or neglect of dependent adults were having difficulty finding Penal Code sections under which they could prosecute such cases. (Ibid.) The solution proposed by the bill was to establish the same criminal penalties for the abuse of a dependent adult as those found in sections 273a and 273d for child abuse. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 248.) When drafting the new legislation, the bill's author lifted the language of the child abuse statutes in its entirety, replacing the word 'child' with 'dependent adult' throughout (internal citation omitted).

After the statute was enacted late in 1983, several non-substantive changes were made. (Stats. 1984, ch. 144, § 160, p. 482.) Later, in conjunction with legislation designed to consolidate the two sets of conflicting reporting laws for elder abuse and dependent adult abuse, a 1986 amendment to section 368(a) made the section

expressly applicable to elders as well as dependent adults. (Stats. 1986, ch. 769, § 1.2, p. 2531, urgency measure eff. Sept. 15, 1986.) [*Heitzman id* at 245.]

In 2004, AB 3095 (Committee on Aging and Long Term Care, Ch. 893, Stats of 2004), related to conditions of probation when an offender is guilty of the crime of elder abuse, as specified. However, the Senate amended AB 3095 to strike "with knowledge that he or she is an elder or dependent adult" and instead included any person who "knows or reasonably should know that a person is an elder or dependent adult." This language is presumably broader than simple knowledge because it includes persons who reasonably should have known of the victim's status as an elderly or dependent person.

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