
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 636 **Hearing Date:** June 8, 2021
Author: Maienschein
Version: February 12, 2021
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Financial abuse of elder or dependent adults*

HISTORY

Source: County of San Diego

Prior Legislation: AB 2657 (Maienschein), 2020, was never heard in Committee
SB 496 (Moorlach), Ch. 272, Stats. 2019

Support: California Advocates for Nursing Home Reform; California Association of Area Agencies on Aging; California Association of Public Authorities for IHSS; California Commission on Aging; California State Association of Counties; California Women's Law Center; County of Contra Costa; County Welfare Directors Association of California; National Association of Social Workers, California Chapter; Retired Public Employees Association; San Diego County District Attorney's Office; Sonoma County Human Services Department; Urban Counties of California

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to authorize information relevant to an incident of elder or dependent adult abuse to be shared with a federal law enforcement agency charged with the investigation of the abuse or to a local code enforcement agency for the sole purpose of investigating a property where the health and safety of an elder or dependent adult resident is at risk.

Existing law establishes the Elder Abuse and Dependent Adult Civil Protection Act. (Welf. & Inst. Code § 15600 et seq.)

Existing law defines for purposes of the Elder Abuse and Dependent Adult Civil Protection Act:

- “Abuse of an elder or dependent adult” means (1) physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; (2) deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering; and (3) financial abuse, as defined. (Welf. & Inst. Code, § 15610.07.)

- “Elder” means any person residing in California who is 65 years of age or older. (§ 15610.27.)
- “Dependent adult” means a person, regardless of whether the person lives independently, between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age. (Welf. & Inst. Code, §15610.23.)

Existing law requires an adult protective services agency to immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse of an elder or dependent adult. (Welf. & Inst. Code, §15640, subd. (a)(1).)

Existing law provides that if an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that they are required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman. (Welf. & Inst. Code, §15640, subd. (a)(2).)

Existing law states that a local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report. (Welf. & Inst. Code, § 15640, subd. (c).)

Existing law states that when a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible. (Welf. & Inst. Code, §15640, subd. (e).)

Existing law states that reports made by mandated reporters of elder or dependent adult abuse are confidential and makes unauthorized disclosure of such reports punishable as a misdemeanor. (Welf. & Inst. Code, § 15633, subd. (a).)

Existing law specifies that reports of suspected abuse of an elder or dependent adult and information contained therein may be disclosed only to the following:

- Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under section 15633.5;

- Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons, except as provided;
- A trusted contact person, as specified.

(Welf. & Inst. Code, § 15633, subd. (b).)

Existing law provides that information relevant to the incident of elder or dependent adult abuse shall be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the bureau, the Department of Business Oversight, or an investigator of the Department of Consumer Affairs, Division of Investigation, who is investigating a known or suspected case of elder or dependent adult abuse. (Welf. & Inst. Code, §15633.5.)

This bill allows information relevant to the incident of elder or dependent adult abuse to be given to a federal law enforcement agency charged with the investigation of elder or dependent adult abuse or to a local code enforcement agency for the sole purpose of investigating a property where the health and safety of an elder or dependent adult resident is at risk.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Current law designates specific entities that are entitled to receive investigative information from Adult Protective Services (APS). WIC §15610.45 provides definitions which govern the Elder Abuse and Dependent Adult Civil Protection Act which allows disclosure to licensing agencies and state and local law enforcement. WIC §15633.5 limits the agencies that APS can provide information to when investigating a known or suspected case of elder or dependent adult abuse. WIC 15633.5 allows Adult Protective Services to share information with a local law enforcement agency, but that term is limited to local police, Sheriff and Probation.

Recently, there has been a rise in abuse cases involving substandard Independent Living Facilities (ILFs). ILFs are unlicensed facilities that provide care to multiple individuals in one residence. Some of these facilities provide extremely substandard care, which can constitute as elder abuse. For licensed facilities, APS can share information with licensing agencies. For ILFs, closure often is accomplished through local code enforcement, and information sharing with such enforcement agencies is not allowed.

This bill would allow APS to share information with code enforcement agencies and their attorney for the purpose of investigating substandard ILFs housing dependent adults. In addition, this bill would allow law enforcement agencies, charged with the investigation of elder or dependent adult abuse, to access information in certain cross jurisdictional elder abuse cases.

2. Elder and Dependent Adult Civil Protection Act

The Elder and Dependent Adult Civil Protection Act (Act) was enacted to prevent elder and dependent adult abuse and neglect and to prosecute those who commit abuse or neglect on elders and dependent adults. Mandated reporters are generally those whose occupations place them in a position to observe, or otherwise have knowledge of, elder or dependent adult physical and psychological abuse, including health care providers, clergy, employees of county adult protective services, or members of local law enforcement. The Act also targets “financial abuse,” which is defined as appropriating the real or personal property of the elder or dependent adult for a wrongful use or with intent to defraud, or both, or assisting another person to do the same.

The Act makes mandated reports of elder and dependent abuse confidential and only authorizes the disclosure of its contents to statutorily specified investigators, including, among others, investigators from an adult protective services agency, the office of the district attorney, a local law enforcement agency, the Department of Business Oversight, and the probate court. Unauthorized disclosure of these confidential reports is punishable as a misdemeanor.

This bill would authorize information relevant to an incident of elder or dependent adult abuse to be shared with a federal law enforcement agency charged with the investigation of the abuse or to a local code enforcement agency for the sole purpose of investigating a property where the health and safety of an elder or dependent adult resident is at risk.

According to the sponsor of this bill, the additional sharing of information with code enforcement officers and federal law enforcement agencies is necessary to investigate unlicensed care facilities. The investigation and closure of such facilities often requires coordination with between law enforcement agencies, however, due to the confidentiality of these reports and the statutory restriction that information from such reports can only be shared with a “local law enforcement agency,” this information cannot currently be shared with those additional types of law enforcement entities.

3. Argument in Support

According to the County Welfare Directors Association of California:

This bill is intended to better protect elders who reside in Independent Living Facilities (ILFs) from elder abuse. ILFs are unlicensed facilities that provide care to multiple individuals in one residence. Some of these facilities have been implicated in scandals involving extremely substandard care, which can constitute elder abuse. Low-income people, who are more likely to reside in these facilities, are disproportionately impacted by this abuse. Additionally, as scams against older adults become more prolific and widespread, some ILFs are involved in national and international scams that are under a federal law enforcement agency’s jurisdiction for investigation and prosecution.

Because these facilities are unlicensed, it is difficult for APS to ensure the wellbeing of residents. It is often local code compliance entities (not licensing agencies) who close substandard facilities through code compliance cases. Also, sharing information with law enforcement agencies charged with the investigation

of elder or dependent abuse in cross-jurisdictional abuse cases is limited by a definition that only includes state and local law enforcement agencies.

AB 636 addresses these barriers by allowing APS investigators to provide information relevant to an incident of elder or dependent adult abuse to be given to a federal law enforcement agency charged with the investigation of elder or dependent adult abuse, or to a local code enforcement agency for the sole purpose of investigating a property where the health and safety of an elder or dependent adult resident is at risk. As a result, this bill will ensure that, as California continues to become demographically older in the near future, this growing and vulnerable population is better protected from abuse.

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