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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 751                      **Hearing Date:** June 6, 2023  
**Author:** Schiavo  
**Version:** March 16, 2023  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** AB

**Subject:** *Elder abuse*

### HISTORY

**Source:** The Arc & United Cerebral Palsy CA Collaboration; California Alliance for Retired Americans

**Prior Legislation:** SB 1123 (Chang, Ch. 247, Stats. of 2020)  
SB 920 (Beall, 2020), held in Senate Health  
SB 338 (Hueso, Ch. 641, Stats. of 2019)  
SB 1191 (Hueso, Ch. 513, Stats. of 2018)  
AB 2623 (Pan, Ch. 832, Stats. of 2014)

**Support:** Asian Law Alliance; California Advocates for Nursing Home Reform; California League of United Latin American Citizens; California Senior Legislature; Cal-TASH; Educate.Advocate; Hindu American Foundation, INC.; Pathpoint; Pioneer Congregational United Church of Christ, Sacramento; Stand With Asian Americans; UDW/AFSCME Local 3930

**Opposition:** None known

**Assembly Floor Vote:** 60 - 0

### PURPOSE

***The purpose of this bill is to clarify that a law enforcement agency that adopts or revises, or, since April 13, 2021, has adopted or revised a policy regarding elder and dependent adult abuse, must also make revisions that include changes to distinct but similar policies, protocols and trainings regarding elder abuse.***

*Existing law* requires police officers and deputy sheriffs to be trained, within 18 months of field duty assignment, in the legal rights and remedies available to victims of elder or dependent adult abuse, such as elder neglect and abuse laws, the role of adult protective services and public guardian offices, and protective orders. (Pen. Code § 13515, subd. (a).)

*Existing law* requires that the Commission on Peace Officer Standards and Training (POST), when updating their elder abuse training materials, consult with the Division of Medi-Cal Fraud and Elder Abuse, local adult protective services offices, the Office of the State Long-Term Care Ombudsman, and other subject matter experts. (Pen. Code, § 13515, subd. (b).)

*Existing law* sets forth various crimes related to the abuse of an elder or dependent adult. (Pen. Code §368.)

*Existing law*, for the purpose of specified provisions, defines “elder and dependent adult abuse” as physical abuse, neglect, financial abuse, abandonment, isolation, abduction, and other specified circumstances. (Pen. Code, § 368.5, subd (c)(2).)

*Existing law* provides that every law enforcement agency, when revising any portion of their policy manual that deals with elder and dependent adult abuse, must include the following information:

- A description of elder abuse and false imprisonment, as specified,
- The statutory rules regarding elder abuse investigatory jurisdiction, and;
- The definition of elder and dependent adult abuse, as specified. (Pen. Code, § 368.5, subd. (c).)

*Existing law*, for the purpose of other specified provisions, defines “elder and dependent adult abuse” as a violation of Penal Code §368 and includes physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm, 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. (Pen. Code, § 368.6, subd. (b)(8).)

*Existing law* defines “senior and disability victimization” among other things, as “elder and dependent abuse,” unlawful interference with a mandated report, homicide of an elder or dependent adult or any person with a disability, child abuse of children with disabilities, domestic violence against an elder or dependent adult or child with disability. (Pen. Code, § 386.6, subd. (b)(13).)

*Existing law* authorizes law enforcement agencies to adopt policies regarding senior and disability victimization. (Pen. Code, § 368.6, subd. (c).)

*Existing law* provides that if a law enforcement agency adopts or revises a policy regarding elder and dependent abuse, or senior and disability victimization, on or after April 13, 2021, it must include, among other things, the following:

- Information about the wide prevalence of elder and dependent adult abuse, sex crimes, hate crimes, domestic violence, and homicide against adult and children with disabilities, including disabilities caused by advanced age,
- A description of specified offenses against elders,
- Training protocols and schedules for training officers regarding elder, dependent adult, and child abuse,
- A requirement that an officer must seek an interpreter when interacting with a person who is hard of hearing or deaf,

- A statement that it is the agencies' policy to make or seek arrests in accordance with specified arrest statutes, and;
- The fact that victims and witnesses with disabilities can be credible witnesses when interviewed by properly trained officers. (Pen. Code, § 368.6, subd. (c)(1)-(28).)

*This bill* sets forth a legislative finding and declaration that changes to a law enforcement policy pursuant to a specific provision of existing law (Penal Code §369.5) constitute a revision of the policy pursuant to a separate provision (Penal Code §368.6.)

*This bill* specifies that a law enforcement agency that adopts or revises, or, since April 13, 2021, has adopted or revised a policy regarding elder and dependent adult abuse, must also make revisions to separate but similar policies, protocols and trainings.

## COMMENTS

### 1. Need for This Bill

According to the Author:

California's 8.5 million older adults and 9 million people with disabilities, both adults and children, are uniquely vulnerable to the harms of abuse and other serious crimes, often unreported, uninvestigated and unpunished. Abuse can take numerous forms, from physical and psychological, to financial exploitation and caregiver neglect. AB 751 is the next, major step toward a culture change in law enforcement to provide much better protection for these at-risk populations by ensuring departments adopt improved training and response policies toward incidents of abuse.

### 2. Law Enforcement Policies Regarding Elder and Dependent Adult Abuse

In 2014-2015, the Santa Clara County Civil Grand Jury received a complaint regarding the alleged failure of law enforcement's use of California's elder abuse laws. The Grand Jury examined its jurisdiction's law enforcement agencies and explored a number of questions, including whether law enforcement manuals adequately discuss elder and dependent abuse laws, whether officers receive adequate training to address such abuse, and whether there was uniformity among law enforcement agencies.<sup>1</sup> Although it found that overall, law enforcement agencies were competent and committed to the protection of the elder and dependent adult population, there could be improvements. Among the improvements was ensuring greater uniformity for elder abuse policy manuals throughout all agencies. For example, the San Jose Police Department manual directed officers to investigate elder abuse incidents by using the county's Child Abuse Protocol.<sup>2</sup>

Some researchers have asserted that the shortcomings of law enforcement elder and dependent abuse policies is not limited to Santa Clara County. One study from 2015 concluded that:

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<sup>1</sup> 2014-2015 Santa Clara County Civil Grand Jury Report: Protecting Our Most Vulnerable Residents. Adopted 3 June 2015.

[https://www.sccscourt.org/court\\_divisions/civil/cgj/2015/Protecting%20Our%20Most%20Vulnerable%20Residents%20Final%20Report.pdf](https://www.sccscourt.org/court_divisions/civil/cgj/2015/Protecting%20Our%20Most%20Vulnerable%20Residents%20Final%20Report.pdf)

<sup>2</sup> *Id.* at pp. 2, 10-11

California has excellent laws on elder abuse, including enhanced penalties for crimes against elders. However, case studies establish that law enforcement response to elder abuse can be inadequate or inappropriate. A survey of law enforcement policies from California jurisdictions identified a root cause of inappropriate responses that are seen systemically throughout the state. Most law enforcement policies in California lack appropriate guidance on response to elder abuse. Elder abuse policies appear to lag decades behind domestic violence and child abuse policies. Many policies define elder abuse as a civil matter, leading officers to inform families that abuse of their loved ones must be addressed through private litigation in civil court. A number of policies instruct officers to arrest perpetrators that are related to the victim; there is no instruction to arrest unrelated perpetrators. A large county in south-ern California has a policy that was last updated in 1987 [...] Protection of vulnerable elders requires appropriate law enforcement policy on elder abuse as a crime worthy of investigation and prosecution. Current policy does not provide that protection.<sup>3</sup>

### 3. Recent Legislation and This Bill

Since the Santa Clara Grand Jury report, two pieces of legislation have been enacted that deal with the issues regarding law enforcement elder abuse policies. In 2018, SB 1191 (Hueso, Ch. 513, Statutes of 2018) required local law enforcement, when revising their training policies with regard to elder and dependent adult abuse, to include specified information such as a description of elder abuse and false imprisonment and references to statutory rules regarding elder abuse investigatory jurisdiction.<sup>4</sup> A year later, SB 338 (Hueso, Ch. 641, Stats. of 2019) established the Senior and Disability Justice Act, which authorized local law enforcement agencies to adopt a policy regarding senior and disability victimization, and required agencies adopting or amending those policies after April 13, 2021, to include specified information, instruction and protocols related to enforcement and training.<sup>5</sup>

Given the way that these two measures were drafted, it was unclear whether a local law enforcement agency that changes its elder and dependent adult abuse policy on or after April 13, 2021 to include information required by SB 1191 (in Penal Code 368.5(c)) must include in that policy specific items required by SB 338 (Penal Code 368.6). A written opinion issued by Legislative Counsel concluded that such an inclusion was necessary, especially in light of a subsequent measure, SB 1123 (Chang, Ch. 247, Stats. of 2020), which amended Penal Code 368.5(c) to revise the definition of “elder and dependent adult abuse” that a local law enforcement agency is required to include in its policy manual when the agency next undertakes its revision process.<sup>6</sup> This bill codifies the conclusion of that Legislative Counsel opinion, and requires a local law enforcement agency that changes its elder and dependent adult abuse policy on or after April 13, 2021 to include information required by Penal Code Section 368.5(c) to also include in that policy the specific items listed in Section 368.6(c).

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<sup>3</sup> Kincaid, Laura. “Elder abuse as an emerging public health concern: identifying deficiencies in law enforcement policy.” *Alzheimers & Dementia*; Volume 11, Issue 75, Part 15. July 2015. <https://alz-journals.onlinelibrary.wiley.com/doi/epdf/10.1016/j.jalz.2015.06.1596>

<sup>4</sup> See Penal Code § 368.5, subd. (c).

<sup>5</sup> See Penal Code § 368.6

<sup>6</sup> Legislative Counsel Written Opinion - #2216309. Issued June 30, 2022.

#### 4. Argument in Support

According to the California Alliance for Retired Americans, one of the bill's sponsors:

Older adults are among those most at risk for crime victimization, including sexual assault, domestic violence, human trafficking, hate crimes motivated by bias against people with disabilities including disabilities caused by aging, and homicide. The obstacles to justice include a lack of reporting of these crimes to law enforcement agencies and the agencies' frequently inadequate response to the reports they do receive. "Increase prevention of elder abuse – both physical and financial" was the highest-ranked goal that California voters selected for the Master Plan for Aging in a 2019 survey.

Children and adults with disabilities are victimized by violent crime 3.5 times the rate of the general population. For those with cognitive disabilities (dementia, intellectual disabilities, and mental illness), the rate is more than 5.5 times higher. A 2012 survey of abuse victims with disabilities found that 52.8% of those who reported the abuse to police said that "nothing happened." Just 7.8% said a suspect was arrested. SB 338 (Hueso) of 2019 spelled out a comprehensive policy for local law enforcement agencies training and guiding officers to handle these crimes. In 2022, California Legislative Counsel determined that later legislation made this policy mandatory on all agencies. AB 751 codifies that finding.

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