
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 338 **Hearing Date:** April 2, 2019
Author: Hueso
Version: March 25, 2019
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Senior and Disability Victimization: Law Enforcement Policies*

HISTORY

Source: The Arc and United Cerebral California Collaboration

Prior Legislation: SB 1191 (Hueso), Ch. 513, Stats. of 2018

Support: The Arc of Ventura County; California Alliance for Retired Americans; California Long-Term Care Ombudsman Association; Educate.Advocate; Empower Family California; National Adult Protective Services Association; National Association of Social Workers – California Chapter; Riverside Sheriffs’ Association; United Domestic Workers of America – AFSCME Local 3930

Opposition: California Public Defenders Association

PURPOSE

The purpose of this legislation is to require that local law enforcement agencies follow the guidelines promulgated by the 2018 San Diego County Elder and Dependent Adult Abuse Blueprint when they adopt policies on elder and dependent adult abuse.

Existing law 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. (Pen. Code § 368, subd. (b)(1).)

Existing law 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. (Pen. Code § 368.5, subd. (a).)

Existing law states that adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect, and may assist local law enforcement agencies in criminal investigations at the law enforcement agencies’ request, provided, however, that law enforcement agencies shall retain exclusive responsibility for criminal investigations, any provision of the law to the contrary notwithstanding. (Pen. Code § 368.5, subd. (b).)

Existing law requires that every local law enforcement agency and long-term care ombudsman program shall, when the agency or program next undertakes the policy revision process, revise or include in the portion of its policy manual relating to elder and dependent adult abuse, if that policy manual exists, the following information: (Pen. Code § 368.5, subd. (c).)

- 1) The elements of specified elder abuse crimes.
- 2) The requirement that law enforcement agencies have the responsibility for criminal investigations of elder and dependent adult abuse and criminal neglect, however, adult protective services agencies 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.
- 3) As a guideline to investigators and first responders, the definition of elder and dependent adult abuse provided by the Department of Justice in its policy and procedures manual, dated March 2015, which defines elder and dependent adult abuse as 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 does not require a long-term care ombudsman program that does not have a policy manual to create or adopt a policy manual. (Pen. Code § 368.5, subd. (c)(2).)

This bill eliminates the duty imposed on long-term care ombudsman programs to revise policies or include specified information regarding elder and dependent adult abuse in their policy manuals.

The bill authorizes local law enforcement agencies to adopt a policy regarding senior and disability victimization.

This bill requires, if a local law enforcement agency adopts or revises a policy manual on elder and dependent adult abuse on or after October 1, 2020, that the policy include specified provisions, including those related to enforcement and training. The policies mandated for inclusion are as follows:

- 1) Information on the wide prevalence of elder and dependent adult abuse, sexual assault, other sex crimes, hate crimes, domestic violence, and homicide against adults and children with disabilities.
- 2) A statement of the agency’s commitment to providing equal protection.
- 3) The definitions and elements of lewd or lascivious acts by a caretaker, elder physical abuse, or false imprisonment of an elder or dependent adult.
- 4) The policy shall instruct officers to consider whether there is any indication that the perpetrator committed the criminal act because of bias, as defined.
- 5) An agency protocol and schedule for training officers, as specified by the bill.
- 6) A requirement that when an officer intends to interview a victim or witness to an alleged crime and the victim or witness reports or demonstrates deafness or hearing loss, the officer first secure the services of an interpreter.

- 7) An agency protocol for providing appropriate training for civilian personnel who interact with the public front desk personnel.
- 8) The fact that the agency requires officers to investigate every report of senior and disability victimization, and does not dismiss any reports as merely civil matter or for any other reason without an investigation.
- 9) An appendix to the policy describing the requirement for these investigations.
- 10) A statement that it is the agency's policy to make warrantless arrests or to seek arrest warrants in every case in which there is probable cause to believe a suspect has committed elder and dependent adult abuse or other related crimes, and, in the case of domestic violence, to the maximum extent allowed. The policy shall also state the agency protocol for seeking those arrest warrants.
- 11) The agency protocol for arrests for elder and dependent adult abuse and other related crimes other than domestic violence.
- 12) The fact that elder and dependent adult abuse, dependent person sexual abuse by a caretaker, other sex crimes, and child abuse can also be domestic violence.
- 13) The fact that many victims of sexual assault and other sex crimes may delay disclosing the crimes.
- 14) An instruction to notify potential victims of sex crimes that they have a right to have a support person of their choice present at all times.
- 15) The agency's cross-reporting requirements and an agency protocol for carrying out these cross-reporting requirements.
- 16) Mandated reporting requirements.
- 17) The fact that victims and witnesses with disabilities can be highly credible witnesses when interviewed appropriately by trained officers or other trained persons.
- 18) A procedure for first-responding officers to follow when interviewing persons with cognitive and communication disabilities until officers.
- 19) The unit or office, or multiple units or offices of the agency, or the title or titles of an officer or officers, tasked with specified responsibilities.
- 20) An agency protocol for seeking emergency protective orders by phone from a court at any time of the day or night.
- 21) A requirement that all officers treat an unexplained or suspicious death of an elder, dependent adult, or other adult or child with a disability as a potential homicide until a complete investigation, including an autopsy, is completed.

- 22) A requirement that, whenever an officer verifies that a relevant protective order has been issued, the officer shall make reasonable efforts to determine if the order prohibits the possession of firearms or requires the relinquishment of firearms.
- 23) Civil remedies and resources available to victims, including, but not limited to, the program administered by the California Victim Compensation Board.
- 24) The content of any model policy on elder and dependent adult abuse and related crimes that the Commission on Peace Officer Standards and Training may develop, as well as the adoption of that policy.
- 25) Use of the full term “elder and dependent adult abuse” in every reference to that crime, with no shorthand terms, including, but not limited to, “elder abuse” or “adult abuse.”
- 26) A detailed checklist of first-responding officers’ responsibilities, as specified.
- 27) The relevant content of any memoranda of understanding or similar agreements or procedures for cooperating with other responsible agencies.
- 28) A statement of the agency chief executive’s responsibilities, as specified.
- 29) An agency protocol for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.
- 30) Any relevant portions of the San Diego County Elder and Dependent Adult Abuse Blueprint and its addendums that the agency chooses to adopt and incorporate in its policy.
- 31) A requirement that all officers be familiar with the policy and carry out the policy at all times except in the case of unusual compelling circumstances as determined by the agency’s chief executive or by another supervisory or command-level officer designated by the chief executive.
- 32) A responsible officer who makes a determination allowing a deviation from the policy shall produce a report stating the unusual compelling circumstances. The policy shall include an agency protocol for providing copies of those reports to the alleged victims and reporting parties.
- 33) For each agency protocol, either a specific title-by-title list of officers’ responsibilities, or a specific office or unit in the law enforcement agency responsible for implementing the protocol.

This bill requires a law enforcement agency that adopts or revises a policy on elder and dependent adult abuse on or after July 1, 2020, to post a copy of that policy on its website.

This bill makes clarifying changes to related provisions with respect to the entities that have jurisdiction to investigate elder and dependent adult abuse.

COMMENTS

1. Need for This Bill

The author states:

In the summer of 2017, San Diego District Attorney Summer Stephan began a formal planning process to coordinate San Diego’s community response to elder abuse. Because of a rise in elder abuse prosecutions, as well as the impending explosion of the elder population, the District Attorney brought together countywide stakeholders on November 3, 2017 for a first-ever “think-tank” of experts, including professionals from all disciplines that serve as touchpoints for elder and dependent adults. Those experts identified gaps and needs in our community, and set goals for the future. District Attorney Stephan then convened a larger Elder and Dependent Abuse Summit on March 1, 2018, where this Blueprint was unveiled and endorsed. For the first time, our county has a formalized written set of goals and guidelines to enable us to utilize best practices as we collectively serve our elders and dependent adults.

SB 338 seeks to protect California’s most vulnerable populations from harm and abuse. Specifically, SB 338 will create the California Senior and Disability Justice Act which will give local law enforcement agencies tools to better protect senior citizens and Californians living with disabilities from abuse, sexual assault, domestic violence, hate crimes, and other major crimes. The bill is largely based on the 2018 San Diego County Elder and Dependent Adult Abuse Blueprint.

2. 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.¹ 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.²

In 2014, Pan authored AB 2623 requiring police officers and deputy sheriffs to be trained in the legal rights and remedies available to victims of elder or dependent adult abuse, such as protective orders, simultaneous move-out orders, and temporary restraining orders. (Pen. Code § 13515, subd. (a).) The legislation also requires Peace Officers Standards and Training Council (POST) to consult with local adult protective services offices and the Office of State Long-Term Care Ombudsman when producing new or updated training materials. (Pen. Code § 13515, subd. (b)(1)-(3).)

¹ “Law Enforcement - FAQs,” *Lexipol* (blog), accessed March 5, 2018, <http://www.lexipol.com/law-enforcement/law-enforcement-faqs/>.

² “Law Enforcement - Case Studies - Lexipol,” accessed March 5, 2018, <http://www.lexipol.com/law-enforcement/law-enforcement-case-studies/>.

3. 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".³ 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.

4. San Diego County Elder and Dependent Adult Abuse Blueprint

San Diego County District Attorney Summer Stephan, along with the San Diego County Health and Human Services, Aging and Independence Services, the San Diego City Attorney's Office and local law enforcement today unveiled the first ever San Diego County Elder and Dependent Adult Abuse Blueprint. The Blueprint commits San Diego County to a written set of goals and a coordinated community response to elder and dependent adult abuse, including model practices and response by law enforcement, prosecution and others. Responding to an increase in elder abuse crimes and prosecutions, as well as the impending explosion of the elder population, the District Attorney brought together countywide stakeholders in November of last year for a firstever "think-tank" of experts, including professionals from all disciplines that serve as touchpoints for elder and dependent adults. Those experts identified gaps and needs in our community, and set goals for the future which resulted in the creation of the new Blueprint.

The San Diego County Elder and Dependent Adult Abuse Blueprint⁴ promulgates guidelines and regulations in San Diego for the treatment and enforcement of elder and dependent adult abuse cases. The regulations cover the following areas:

- Dispatcher Response
- Patrol Response in the following categories:
 - Physical Abuse/Endangerment Cases
 - Financial Abuse
 - Neglect Cases
 - Domestic Violence
- Investigation Response
- Prosecution Response
- Restraining Orders
- Psychiatric Emergency Response Team (PERT)

³ Robert Fettgatter et al., "Elder Abuse as an Emerging Public Health Concern: Identifying Deficiencies in Law Enforcement Policy" (Coalition for Elder & Dependent Adult Rights, 2015).

⁴ <https://www.sdca.org/helping/elder-abuse-blueprint.pdf>

- Cross-Reporting
- Mandated Reporting
- Ombudsman Reporting Requirements
- Suspected Sexual Abuse of an Elder or Dependent Adult
- Aging and Independence Services
- Adult Protective Services
- Long Term Care Ombudsman
- Office of the Public Administrator/Public Guardian/Public Conservator
- California Department of Social Services
- Suspicious Death/Homicide and Review Teams
- Removal of Firearms

This bill would mandate that many of the requirements set forth in the San Diego County and Dependent Adult Abuse Blueprint be adopted by other agencies and localities in the State of California should they choose to create or update an elder abuse policy manual.

5. Argument in Support

According to The Arc:

Adults and children with disabilities -- including intellectual and developmental disabilities, mental illness and other diseases, temporary and permanent injuries, and disabilities caused by aging -- are victimized by major crimes including abuse, sexual assault, domestic violence and hate crimes at much higher rates than the general population. Section 1(b) of SB 338 spells out some of the recent, grim statistics.

An extensive academic review found:

“Across a variety of studies, the officially reported violence against persons with disabilities is simply alarming (Petersilia 2001). Moreover, evidence suggests that officially reported violence against people with disabilities, and criminal victimization more generally, is merely the tip of the iceberg as most violence against people with disabilities goes unreported. Lack of reporting occurs for a variety of reasons, including a belief that the criminal justice system cannot—or will not—serve those with disabilities. Therefore, it is entirely appropriate to refer to people with disabilities who are victimized as ‘invisible victims.’

The same study found “numerous challenges related to working within the [California] criminal justice system,” including:

- “Quite often there is a failure to pursue cases perceived to lack a credible victim (i.e. a victim with certain types of disabilities).
- “Cases are dropped due to mistakes that occurred during the investigation process; and
- “Cases are not investigated due to concern over jurisdictional issues.”ⁱⁱ

The 2012 National Survey on Abuse of People with Disabilities found that, of those surveyed, 42.8 percent reported that “nothing happened” as a result of their reports to law enforcement; just 7.8 percent reported that a suspect was arrested.

The laws and legal tools available to law enforcement agencies to protect people with disabilities are scattered throughout the codes, with insufficient law enforcement training requirements and no effective accountability mechanisms. SB 338 will make law enforcement agencies aware of all existing laws and tools to protect people with disabilities and elders. It will strongly encourage them to adopt comprehensive formal policies on these crimes, guiding officers on enforcement and including training requirements and specific, locally developed accountability protocols.

SB 338 is based largely on the 2018 San Diego County Elder and Dependent Adult Abuse Blueprint. We believe that SB 338 will result in a real culture change in California law enforcement toward truly equal protection of people with disabilities and also build community confidence in the criminal justice system, leading to more reporting and much more cooperation with law enforcement.

6. Argument in Opposition

According to the California Public Defenders Association:

We are opposed to SB 338, unless it is amended, because it suggests that the solution to every violation of Penal Code section 368 or a “related crime” is an arrest, even when the officer on the ground, the alleged victim, and the filing prosecutor believe otherwise.

SB 338 authorizes police departments to create policy manuals relating to the handling of crimes against the elderly and children with disabilities. CPDA has no objection to the creation of such manuals. However, SB 338 also attempts to require police departments to set *mandatory* arrest policies for any offense allegedly involving an elder or disabled child. CPDA strongly opposes this “one size fits all” approach, because it simply ignores the reality on the ground.

Under current law, once an officer has probable cause to believe a crime has been committed in the officer’s presence, the officer has the authority to arrest the suspect. (Pen. Code § 836.) However, an arrest is not mandatory in all instances – for example, if an officer concludes that an immediate arrest is unnecessary because there is no current danger to a victim, it would be unsafe, or would otherwise be unwise or unjust, the officer may refer the case to the prosecution for filing consideration without first making an arrest. Importantly, even now, when officers have the discretion to avoid arrest where appropriate, approximately ¼ of cases referred for prosecution under the current system are rejected for filing—meaning that after reviewing an arresting officer’s report, prosecutors determine that there is insufficient evidence to justify prosecution.

While it is undeniable that some offenses described in SB 338 should be considered for immediate arrest, it is equally undeniable that others do not. If, for example, police respond to a report that a bipolar child has pushed an elderly person—but subsequently learn that the child is now at the hospital and stable—the mandate proposed by SB 338 would require the police to arrest the child, even when the officer and alleged victim agree that such an approach would be disastrous.

Because SB 338 overlooks the fact that police encounters with the public are fluid and come in many shades of gray, and because a blanket policy requiring arrest in *every* case will inevitably run counter to the interests of the public in some instances, we must respectfully oppose this bill unless and until proposed Penal Code section 368.6, subd. (c)(8) is removed.

Until then, because SB 338 mandates arrest even where arrest is counter-productive to the interests of alleged victims, defendants, and the public good, we respectfully urge your “NO” vote on SB 338 when it comes before you in the Senate Public Safety Committee.

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