
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 352 **Hearing Date:** April 28, 2015
Author: Block
Version: February 24, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Elder Abuse*

HISTORY

Source: San Diego District Attorney's Office

Prior Legislation: AB 332 (Butler) Ch. 336, Stats. 2011

Support: Association for Deputy District Attorneys; California District Attorneys Association; California Advocates for Nursing Home Reform; California Retired Teachers Association; California State Sheriffs' Association

Opposition: None known

PURPOSE

The purpose of this bill is to have the court consider issuing a protective order upon a conviction of elder abuse.

Existing law defines "dependent adult" as any person who is between the ages of 18 and 64, who has physical or mental limitations which 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. (Penal Code § 368(h).)

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

Existing law provides that any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstance or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully cause or permits the elder or 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 or two three or four years in state prison or a fine not to exceed \$6,000 or both fine and imprisonment. (Penal Code § 368 (b))

Existing law provides that any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation is punishable by a fine not to exceed \$1,000 or imprisonment in county jail not to exceed one year, or by both that fine and imprisonment. (Penal Code § 368 (c))

Existing law establishes fines and other punishment for theft, embezzlement, forgery, or fraud, and identity theft and identity crimes against an elder or dependent adult, as follows:

- A person who is not a caretaker, and who knows or reasonably should know that the victim is an elder or a dependent adult, and the value of the labor, goods, services, funds, or real and/or personal property taken does not exceed \$950 may be punished by a fine not exceeding \$1,000 and/or by imprisonment in a county jail not exceeding one year. (Penal Code § 368 (d)(2).)
- A person who is not a caretaker, and who knows or reasonably should know that the victim is an elder or a dependent adult, and the value of the labor, goods, services, funds, or real and/or personal property taken exceeds \$950 may be punished by up to one year in a county jail or 2, 3 or 4 years in the county jail and a fine up to \$10,000 or by imprisonment in the county jail not exceeding one year and a fine up to \$2,500. (Penal Code § 368 (d)(1).)
- A person who is a caretaker, and the value of the labor, goods, services, funds, or real and/or personal property taken does not exceed \$950 may be punished by a fine not exceeding \$1,000 and/or by imprisonment in a county jail not exceeding one year. (Penal Code § 368 (e)(2).)
- A person who is a caretaker, and the value of the labor, goods, services, funds, or real and/or personal property taken exceeds \$950 may be punished by up to one year in a county jail or 2, 3 or 4 years in the county jail and a fine up to \$10,000 or by imprisonment in the county jail not exceeding one year and a fine up to \$2,500. (Penal Code § 368 (e)(1).)

Existing law allows for a protective order for an elder or dependent adult who has suffered abuse. (Welfare and Institutions Code § 15657.03)

Existing law provides that any person who commits the false imprisonment of an elder or dependent adult by use of violence, menace, fraud or deceit is guilty of a felony punishable in county jail for 2, 3 or 4 years.

This bill would provide that upon conviction for a violation of Penal Code Section 368 (b), (c), (d), (e) or (f) the sentencing court shall consider issuing an order restraining the defendant from any contact with the victim for up to 10 years.

This bill provides that in determining the length of any restraining order the court shall consider the seriousness of the facts before it, the probability of future violations, and the safety of the victim and his or her immediate family.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 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).

While significant gains have been made in reducing the prison population, the state now 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. Need for This Bill

According to the author:

California has the highest number of aging adults in the nation, with 4.2 million individuals over the age of 65 years. Currently, loopholes exist in the law that restrict a prosecutor's ability to protect victims of Elder Abuse by using post-conviction Criminal Protective Orders. This leaves our most vulnerable crime victims with an unnecessary level of exposure to their perpetrators. This segment of our population is ill equipped to pursue protection through civil remedies such as Temporary Restraining Orders.

SB 352 seeks to protect victims of elder abuse through the use of the post-conviction Criminal Protective Orders that are currently available to victims of domestic violence and stalking. The protective orders allow up to 10 years of protection. Including victims of elder abuse under these special protections is consistent with the Legislature's handling of offenses that target elder adults due to their potential vulnerability. Elder adults are particularly vulnerable after their perpetrators have been convicted, sentenced and released on parole. This measure will extend a level of protection that is needed in those instances.

2. Elder Abuse

Existing law makes it a crime for a person who knows or should have known that a person is an elder or dependent adult to willfully cause or permit the person or health of that elder adult to be injured or for that person to be placed in a situation in which his or her person or health is endangered. Existing law also specifies penalties for a person who violates any law on theft, embezzlement, forgery, fraud or identity theft when the victim is an elder with increased penalties for higher monetary amounts. Existing law also makes it a crime to falsely imprison an elder or dependent adult by use of violence, menace, fraud or deceit.

3. Protective Order for Eder Abuse

Under existing law, an elder or dependent adult who has suffered abuse can seek a protective order under the Welfare and Institutions Code. The order does not require a conviction and can be for no more than five years. (Welfare and Institutions Code § 15657.03)

This bill would require the court to consider issuing an order restraining a defendant convicted of elder abuse from any contact with the victim. The restraining order may be valid for up to 10 years and in determining the length of time the court shall consider the seriousness of the facts of the case, the probability of future violations and the safety of the victim and his or her immediate family. The protective order may be issued whether the defendant served time in jail, prison or has his or her sentence suspended or is placed on probation. The order is post-conviction so unlike pre-conviction orders, the defendant has been found guilty of the acts that have been alleged.

The San Diego District Attorney's Office is the sponsor of the bill and believes that existing orders are not adequate in many elder abuse cases:

The thrust of SB 352 is to add a provision to PC 368 that mirrors the language in PC 273.5 (j) (Domestic Violence) and PC 646.9(k)(1) (Stalking) and closes this critical loophole in the law that makes our elder victims vulnerable to further abuse and anxiety. Currently, before a conviction while a case is pending, a Criminal Protective Order is filed offering our elder victims a firm sense of security. However, there are loopholes in the law that restricts a prosecutor's ability to protect victims of Elder Abuse through the use of post-conviction Criminal Protective Orders. Current law strips these victims of that sense of security post-conviction unnecessarily. This leaves our most vulnerable crime victims with an unnecessary level of exposure to their perpetrators. SB 352 shall put victims of Elder Abuse in the same category as Domestic Violence and Stalking Victims by extending the reach of criminal protective orders to every class of Elder Abuse victim.

A recent San Diego case illustrates why this law is needed. An 83-year-old victim had been living with her adult son and his defendant girlfriend. The defendant was the full time caregiver for the elderly and very frail victim. In November 2014, neighbors reported seeing the defendant pushing the victim across the street screaming at her. The defendant was seen pulling the victim by the arm and pushing her into the house. Police were dispatched and arrived in time to actually witness the defendant standing over the victim screaming at the elderly woman. The defendant then grabbed the victim by her clothing, and violently lifted her off the ground and dropped her again. The defendant was charged with one counts of felony elder abuse, which was reduced to a misdemeanor by the judge. The defendant was given 3 years summary probation (no supervision) and ordered to report to a 52 week elder abuse program. Under current law, in this particular situation, although a "stay away" is listed as a term of probation, it lacks an enforcement protocol. If, in the future, law enforcement is called to this home again, there will be no record of a restraining order in the eWARRANTS system.

By 2050, people age 65 and older are expected to comprise 20% of the total U.S. population. The fastest growing segment of American's population consists of those 85 and up. In 2010, there were 5.8 million people aged 85 or older. By 2050, it is projected that there will be 19 million people aged 85 or older. This segment of our population is least equipped to pursue protection through civil remedies such as temporary restraining orders.

Several classes of elder abuse victims remain unprotected under the current law:

Where the defendant is unrelated to a defendant which is most prevalent in the large volumes of cases involving caretakers who abuse both physically; financially; or through neglect;

Where defendant is a relative of victim but not within two degrees of consanguinity leaving elders exposed to perpetrators who may be cousins, aunts/uncles, great-grandchildren, nieces/nephews; step-children; etc.

Where the defendant gets sentenced to probation and the defendant and victim are not related within two degrees of consanguinity. This scenario is most common when we have elder abuse committed by caretakers.

This bill does not require the court to order a protective order but requires that they consider such an order. Should courts be required to consider a protective order in these types of elder abuse cases?

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