

Introduction

During the summer and fall of 2013, the authors of this paper – Jacob Smith and Vincent Wiraatmadja, worked at McGeorge’s Elder Law clinic and took on several cases that involved physical, psychological, and financial elder abuse. Eager to find solutions to the silent crime of elder abuse and learn more about the legislative process, we enrolled in McGeorge’s Legislative and Public Policy clinic. We identified two possible solutions to address the problem of elder abuse and selected one, which eventually became Assembly bill 2623.

Identification of the Problem

Elder abuse is a pervasive and underreported issue. At the local law enforcement level, elder abuse is typically viewed as a family problem best handed by the civil courts, which is compounded by institutional reticence to avoiding interfering in family affairs. Anecdotal evidence suggests this mindset makes officers more hesitant to arrest, even in the presence of clear evidence of abuse. While working at the Elder Law clinic, we handled several cases where police were summoned to the home of a victim of elder abuse, but did not arrest the abuser despite clear signs of elder abuse. Consequently, the victim had to leave his or her home or remain in an abusive and potentially violent situation.

Evidence of the Problem

As of the 2010 Census, there were 4.2 million people aged 65 or older in California.¹ Based on monthly reports sent by local Adult Protective Services (“APS”) offices, the California Attorney General estimates that 200,000 elder or dependent adults are abused each year.² However, it is important to note that this crime is underreported for a variety of reasons, which range from an inability to communicate, to an unwillingness to report abusive family members, and to shame at being victimized. Given the demographic reality of the impending tide of the silver tsunami of retiring baby boomers, these numbers will grow.

The National Research Council estimates 93% of elder abuse is never reported. In 2010 alone, there were an estimated 632,693 cases of elder abuse in California – greater than the population of Vermont.³ As the Baby Boomers retire and California ages, the number of victims will increase. The number of Californians aged 65 will rise to 6 million by 2020.⁴ As California’s population ages, increasing numbers of older people are at risk of abuse, neglect, and exploitation.

Summary of Existing Elder Protection Law in California

Elder Abuse Defined

By law, an “elder” is any resident of California aged 65 or older. Cal. Welf. & Inst. Code § 15610.27. Elder abuse is “Physical abuse, neglect, financial abuse, abandonment, isolation,

¹ http://www.centeronelderabuse.org/docs/COE_IssueBrief2013_final.pdf

² *Id.*

³ Stop Elder Abuse Foundation, <http://seanoc.org/CaliforniaElderAbuseStatistics.pdf>

⁴ California Department of Finance, State and County Population Projections by Race/Ethnicity and Age, 2013, <http://www.dof.ca.gov/research/demographic/reports/projections/P-2/>

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.” Cal. Welf. & Inst. Code § 15610.07.

Law Enforcement Training on Elder Abuse

Law enforcement officers are required to receive elder abuse training within 18 months of being assigned to the field. Cal. Pen. Code § 13515. This section lists eight topics that must be covered: relevant laws; recognition of elder and dependent abuse; reporting requirements; neglect of elders and dependent adults; fraud; physical abuse; psychological abuse; and the role of local APS entities and public guardian offices. Penal Code § 13515(a)(1-8). While the Commission on Peace Officer Standards and Training (“POST”) develops the curriculum, the Attorney General’s Bureau of Medi-Cal Fraud & Elder Abuse is responsible for approving the training materials and any updates. Penal Code § 13515(b).

Mandated Reporting of Elder Abuse

Mandated reporters of elder abuse who have knowledge of an incident that reasonably appears to be abuse that occurred in a long-term care facility must report the allegation to their local law enforcement agency. Welf. & Inst. Code § 15630(b)(1). The agency receiving the report of abuse in a long term care facility from a mandated reporter must then report the incident to the local district attorney, the Bureau, and the state agency that regulates the long term care facility. Welf. & Inst. Code § 15630(b)(1)(D)(i-v). However, if the elder abuse occurs anywhere besides a long-term care facility, “the report shall be made to the adult protective services agency or the local law enforcement agency.” Welf. & Inst. Code § 15630(b)(1)(F).

Legislative History of Selected Elder Protection Law

Law Enforcement Training

The requirement that law enforcement officers receive training on the subject of elder abuse (Penal Code § 13515) was added to the Penal Code in 1997 by Assembly bill 870. That bill required law enforcement officers, by January 1999 or within 18 months of assignment to field or investigative duties, to complete an elder abuse training course to be established by POST. The training was required, at a minimum, to address relevant laws, recognition of elder abuse, reporting requirements and procedures, as well as neglect and fraud.

In 2000, section 13515 was amended by AB 1819. That bill changed the scope of the training course from “elder abuse” to “elder and dependent adult abuse.” The bill also included eight specific subjects to be covered by the POST training course. The additions to the POST curriculum were seen as “minor, absorbable costs” to existing training requirements.⁵

In 2010, section 13515 was amended by Senate bill 110. That bill required that any new materials or changes made to the elder abuse curriculum be made in consultation with the Bureau of Medi-Cal Fraud and Elder Abuse and other subject matter experts. SB 110 also enumerated the subjects to be covered in new training materials, including law enforcement’s jurisdiction over elder abuse cases and reminders that dependent people who live independently are a protected class.

Mandated Reporting

⁵ AB 1819 Senate and Assembly Floor Analyses, September 7 and September 14, 2000.

In 1994, SB 1681 enacted the version of Welfare and Institution Code section 15630 which established the current requirement that abuse occurring outside of a long-term care facility be reported to adult protective services *or* local law enforcement. The primary purpose of that bill was to restructure the elder and dependent adult abuse reporting statutes to ensure that they were orderly and easier to understand.

In 2008, AB 2100 amended section 15630 by requiring mandated reporters to report known or suspected cases of elder abuse in a long-term care facility to the local long-term care ombudsman (“LTCO”) or to local law enforcement who in turn must report the abuse to the local district attorney’s office.

In 2012, AB 40 amended section 15630 by requiring mandated reporters to report to local law enforcement and the local LTCO allegations of abuse occurring in a long-term care facility, thus removing their ability to choose whether to report the abuse to either the local LTCO or local law enforcement.

Proposed Solutions

Our overarching goal was to foster change at the local law enforcement and local protective agency level and enhance the protections afforded California’s elderly population. To this end, we proposed changing California’s elder protection laws in two overlapping areas:

- 1. Enhancing law enforcement training on elder abuse; and**
- 2. Tightening up reporting requirements for mandated reporters of elder abuse.**

The training requirement sought to enhance existing elder abuse training that is a part of law enforcement officers’ initial police academy curriculum by requiring refresher training every two years. The proposed reporting changes would equalize existing reporting requirements imposed on mandated reporters of elder abuse by requiring that mandated reporters report incidents of elder abuse occurring outside of a long-term care facility to local law enforcement *and* the local adult protective services agency.

Law Enforcement Training

By addressing the issue of law enforcement training we sought to ensure that allegations of elder abuse would be treated seriously, provide education about civil remedies available to victims of elder abuse, and to ensure that law enforcement officers retain this knowledge throughout their careers. Our overall goal was to enhance the safety of a rapidly growing segment of California’s population that is at an increased risk for abuse.

Mandated Reporting

To enhance the protections that elderly Californians already receive under law we proposed that whenever mandated reporters come across elder abuse this information should come to the attention of the police so that they may make the decision, guided by their professional judgment, whether to investigate these reports. As the law currently stands, mandated reporters who come across what they reasonably believe is elder abuse outside of a long term care facility have the choice of reporting such abuse to the local adult protective services office or police. To achieve the equitable result of increasing police involvement in elder abuse cases, and thereby decreasing elder abuse, we proposed requiring mandated reporters report abuse to the local adult protective services agency *and* police.

Preferred Solution

Law Enforcement Training

A major issue with the current law enforcement elder abuse training model is the lack of a refresher training course. We proposed establishing an elder abuse refresher training requirement by using language modeled on California's domestic violence training statute, which requires officers below the rank of supervisor who would normally answer domestic violence calls to take domestic violence refresher training courses every two years. Penal Code § 13519. Our preferred solution would incorporate similar refresher training course language into section 13515 of the Penal Code.

Additionally, we proposed amending section 13515 of the Penal Code to require that officers be educated on the use of elder abuse protective orders (as defined by section 15657.03 of the Welfare and Institutions Code) as potential civil remedies for victims of elder abuse. When applying for an elder protective order, the elder can request both a temporary restraining order ("TRO") and a move out order. At McGeorge's Elder Law clinic, we had a client who called law enforcement thirty times, but was told by law enforcement officers that she would have to begin unlawful detainer proceedings, also known as eviction proceedings, to get her abuser out of the house. Unlawful detainer proceedings are time-consuming and complicated. A simpler solution in cases of physical elder abuse is to have the victim apply for a TRO and move out order. That process can be completed in as little as few as four hours.

We also proposed amending section 13515 to require that officers be issued elder abuse information cards (similar to *Miranda* warning cards) during their initial and refresher training. These elder abuse cards would include the physical signs of elder abuse, possible remedies, including advice about elder protective orders, and the contact information for local adult protective services. We believe that issuing these cards would go a long way with helping officers deal with elder abuse calls by providing the information in a succinct and portable card.

Mandated Reporting

We proposed amending section 15630 to require that when a mandated reporter is aware of an incident that reasonably appears to be elder abuse occurring anywhere outside a long-term care facility, the mandated reporter would be required to report the incident to the local adult protective services agency *and* local law enforcement, but not require further action by the local agencies. This would serve to ensure that local law agencies are aware of elder abuse occurring in their jurisdictions, while preserving the discretion of police officers to do their job.

Groups/Parties for and Against

Elder abuse legislation increased significantly since the 2008–2009 legislative term. Much of the proposed legislation has been enacted into law. In looking over past committee analyses from both chambers, many groups rise in support and few come out against the bills. It seems that coming out against elder abuse legislation is not very popular, likely because doing so would create a public image problem for the groups that do come out in opposition.

Our proposed mandates would mainly affect two groups: law enforcement and mandated reporters of elder abuse. Law enforcement groups might oppose the increased training burdens that our proposal imposes. In the past, however, law enforcement groups such as the POST Commission, the California Police Chief's Association, and the California Peace Officer's Association have come out in support of increased training standards. This was the case with AB 1819 in 2000, which amended section 13515 of the Penal Code to specifically enumerate the subjects covered during elder abuse training. Law enforcement support of AB 1819 stemmed

from the realization that specialized elder abuse training was necessary due to California's growing elderly population. Accordingly, we initially assessed that law enforcement groups would support our proposal or remain neutral. These groups would have nothing to lose in supporting our proposal, as the state would have to reimburse the increased training costs associated with a state-mandated local program. POST receives its training funds from the Peace Officers Training Fund, which in turn receives money from the State Penalty Assessment Fund. The Penalty Assessment Fund is funded by criminal and traffic fines. Given this funding source, we also assessed it would be unlikely the State Department of Finance would oppose our proposal.

The Legal Drafting Process

In the fall of 2013, we began drafting our language in earnest. Our drafting efforts began with a review of the histories of Penal Code section 13515 (training) and Welfare and Institutions Code section 15630 (mandated reporting). Our search went back to when Penal Code section 13515 first appeared in 1997, and when the modern version of Welfare and Institutions Code section was enacted in 1994. We then read each and every proposed and enacted amendment of those code sections to the present day. Additionally, we examined the legislative history behind the enactment of refresher training on domestic violence for police officers. This historical review gave us perspective on the trends in the law, and allowed us to identify potential authors, sponsors, and support coalitions.

Armed with this information, we knuckled down and spent a week drafting amended versions of Penal Code section 13515 and Welfare and Institutions Code section 15630. In December 2013, our classmate Fielding Graves, who works for Assemblymember Bob Wieckowski, submitted our draft language to the Office of Legislative Counsel so that it could be turned into a bill. With our language submitted to Legislative Counsel, we could shift our focus from policy formulation to policy implementation.

Explanation of Real World Efforts

Finding an Author

Fall 2013

Our search for an author to carry our bill began in the first semester. We asked Professor Melissa Brown, the director of McGeorge's Elder Law Clinic, to help point us in the direction of prior advocates for elder causes. She referred us to Cathy Christian of Nielsen Merksamer.

We met with Ms. Christian in September and told her about our proposal of mandatory arrests in cases of elder abuse. Although supportive, she quickly pointed out that we would receive significant resistance from law enforcement groups and civil liberty groups. We had been hearing this from our professors as well. The fact that multiple political insiders brought up this obstacle caused us to reconsider including this aspect of the bill. Ms. Christian suggested we look into whether there is a disconnect between reports of elder abuse and instances of elder abuse, which led us to focus on training and requirements placed on mandated reporters.

During our meeting, Ms. Christian placed a call to the committee consultant for the Assembly Aging and Long-Term Care Committee, Robert MacLaughlin. We met with Mr. MacLaughlin two days later. He listened to our proposal and suggested that Assemblymember Mariko Yamada might be interested working with us to create and carry a bill. He put us in touch with Ms. Yamada's chief of staff during that meeting and it was agreed that we would reconvene once language had been drafted.

As noted above, zeroing in on our proposed policy change and drafting the language took the better part of the first semester. Although we had intermittent conversations with Ms. Christian and Mr. MacLaughlin, the remaining part of the first semester was dedicated to background research and drafting. Searching for an author became a secondary priority after it became clear to us that we needed draft language before we could get the attention of staffers.

Spring 2014

After our language had been drafted and submitted to Legislative Counsel, our search for an author began in earnest. Fielding Greaves, who previously worked as a staffer for Assemblymember Dr. Richard Pan, suggested that we speak with Dr. Pan's staff. Although we had an in with Ms. Yamada's chief of staff, we decided to go with Fielding's suggestion. This was primarily because Dr. Pan was running for California's Sixth Senate District and his staffers were receptive to assisting law students from the Sixth District. Additionally, Dr. Pan and his staff were actively looking for a bill that would appeal to elders. Ms. Yamada on the other hand had a long track record of elder bills and already had some in the works. We decided to pitch the bill to Dr. Pan's staff based on the fact that he needed an elder bill. We also thought that we might receive more attention from Dr. Pan's staff as this would be the only elder bill on their legislative agenda.

Fielding helped us by introducing us to Dr. Pan's Chief of Staff, Crystal Strait. We pitched the bill to Ms. Strait, who asked us whether we were shopping the bill around. We told her that we were in the early stages of the process and that we would be visiting Assemblymember Wieckowski's office as well. Ms. Strait brought in Dr. Pan to talk about the bill. He immediately commented on the mandated reporting requirements. Dr. Pan explained that if he were to carry the bill, the language would have to go. As a practicing physician, he felt that increased reporting requirements would distract practitioners from their jobs and bury them in bureaucratic paperwork. Although we wanted to hold on to the language because we believed that such paperwork served as a procedural protection for seniors, we were willing to barter away the language if we could not find anyone else to carry the bill.

In Mr. Wieckowski's office, we pitched the bill to his legislative director, Heather Falkenthal. She was kind enough to hear us out and then told us that the office was already working on a large piece of elder legislation, AB 2171 and politely declined to author our bill. In the wake of our meeting with Ms. Falkenthal, we sent Ms. Strait an email confirming that we were going with Dr. Pan as the author and were amenable to dropping the reporting requirements. We began working with Bernadette Lawrence, one of Dr. Pan's Legislative Aides. A few days later, Ms. Lawrence told us there was a small hitch: Dr. Pan was over the limit for the amount of bills he could introduce per legislative session. The solution was to ask a favor of another member: Sharon Quirk-Silva would introduce the bill. Although Dr. Pan was over the limit, the limit only applies to bills that a member *introduces*; his name could be amended onto the bill after 30 days.

Our bill was introduced as AB 2623 on February 21, 2014. The Assembly Rules Committee double-referred AB 2623 to the committee on Public Safety as well as Aging and Long-Term Care.

Searching for a Sponsor

While we searched for an author, we also looked for a sponsor to lend legitimacy to the bill. Two McGeorge students as sponsors did not necessarily give the bill much weight in the

eyes of other members. Professor Brown put us in touch with several organizations, as did Mr. MacLaughlin. We attended a statewide elder justice summit and met several members of the California Senior Legislature. Unfortunately, none of the groups we met at the elder justice summit were able to come on as sponsors for the bill. Each of these groups had set their legislative agendas were in the spring of 2013. In the end, the search proved fruitless and we decided to simply have the bill be author-sponsored.

Gathering Support

Law Enforcement

As the bill would directly impact law enforcement officers, it was imperative that we reach out to that community early to get their input. We wanted to make sure we did not surprise them. We had been repeatedly warned that the law enforcement lobby is very powerful. Ensuring that they supported the bill, or at least remained silent, became a top priority for us.

Professor Rex Frazier, Director of the Legislative and Public Policy Clinic at McGeorge, put us in touch with John Lovell, who has been *the* legislative advocate for many law enforcement associations for close to two decades. He understands how the law enforcement community works at all levels.

Our conversations with Mr. Lovell began more as inquiries about the mechanics of law enforcement training. We wanted to get a feel for how law enforcement would respond to a new legislative mandate. We found out that although the rank and file officers were not fond of more training, the executive leadership prioritized more training.

Mr. Lovell raised a concern about whether the language of AB 2623 as introduced was overbroad. As initially drafted the language would require police officers assigned to areas such as homicide or narcotics, where they were unlikely to come across elder abuse, to receive training that was unnecessary for their daily operations. Mr. Lovell indicated that if we narrowed the language to solely encompass officers who routinely responded to elder abuse calls, law enforcement leadership would be on board.

This was a simple fix to which Ms. Lawrence and we agreed. It was logical to not take up the time of specialized units for training that would never be used in the field. With that, the amended language was sent to Legislative Counsel and the law enforcement community was on our side.

Elder Advocacy Groups

Working with elder advocacy groups has been an interesting experience. We reached out to many of them in the fall semester. They were the subject matter experts, while we were relative novices in the elder abuse field. Many suggestions were given to us and are still forthcoming.

Adult Protective Services has been especially vocal in their support and suggestions. We have received several phone calls and emails from them. They support the bill and what it attempts to achieve, as the dissemination of knowledge is helpful. However, APS is a government entity that is severely underfunded and understaffed. They are concerned that the bill reinforces the cultural notion that elder abuse is a civil matter, not a criminal one. This would mean that police would continue to be dismissive of elder abuse complaints and leave APS to deal with the victims.

In response to that issue, we observed that changing police culture is not a quick thing. It took decades for police, and society in general, in the late 1940s and 50s to view child abuse as a

criminal matter. The same is true of domestic violence against women in the 60s and 70s. Elder abuse legislation is relatively new, with serious laws against elder abuse appearing in the late 1990s. It is unfortunate that change cannot be made quickly, but the cultural shift within both the police force and the public at large is changing. Legislation such as AB 2623 helps with the codification of those cultural shifts.

The Legislative Process

Assembly Public Safety Committee

The day we met with Mr. Lovell, we also received news that our bill had been placed on the consent calendar in the Public Safety Committee. This meant that the Democrat and Republican committee consultants met and agreed that the bill should be passed out of committee without a hearing – AB 2623 was not controversial. Ms. Lawrence warned us that any member of the committee could pull the bill from the consent calendar for any reason. We would still have to be prepared to appear.

Our preparations consisted of writing an author's statement, recruiting two witnesses, and preparing the witnesses. We made calls to former clients of the Elder Law Clinic in the hope that they would be able to testify about their experiences. Unfortunately, the clients who had suffered from elder abuse were either physically too weak to leave the house or were full-time caretakers for their spouses and unable to attend. We chose to draft a victim's statement, with consent of one of our former clients, and have Jacob read it at the hearing. We also asked Professor Brown to testify as an expert in the field.

The hearing date was set for April 8, 2014. We arrived early and walked with Dr. Pan to sign in with the clerk in the hearing room. When Dr. Pan was unable to find AB 2623 on the list of bills to be heard, the clerk informed him that the bill was being passed on the consent calendar with unanimous votes and that we did not have to testify. This left us free to plan for the next committee: Aging and Long Term Care.

Assembly Aging and Long Term Care Committee

AB 2623 went before Aging and Long Term Care on April 22, 2014. We stuck to the same plan we had with Public Safety: Jacob would give the victim's statement and Professor Brown would give an overview of elder abuse in California. Dr. Pan delivered his author's statement then Jacob and Professor Brown delivered their testimony. After these remarks were delivered, several elder advocacy groups voiced their support during the "meet too" portion of the testimony, including California Advocates for Nursing Home Reform and the California Senior Legislature. Only one group testified in opposition to the bill, the California Cerebral Palsy association, which protested that the bill did nothing to protect children with disabilities. After all testimony was heard, the members of the committee voiced positive remarks and Assemblymember Bonnie Lowenthal asked to join as a co-author of the bill, which passed out of committee 7-0.

The Current State of AB 2623 and Remaining Work

As this paper is written, AB 2623 is at the Assembly Appropriations Committee, where it has met the most resistance. We met with Geoff Long, the Chief Consultant for the Appropriations Committee, to get his take on the bill. Mr. Long did not like AB 2623 because he felt that the current amount of legislatively mandated officer training consumes too much officer time. He told us that the bill would likely die in Appropriations. Because Mr. Long is the

Chief Consultant, we understood this statement to mean that AB 2623 will die in Appropriations unless we made some amendments that, in Mr. Long's eyes, could save the bill.

Mr. Long suggested several amendments modeled on Penal Code section 13540, which created a procedural pathway for POST to use feasibility studies to determine whether dairy inspectors should be accorded peace officer status. Mr. Long's suggested amendments to AB 2623 would create a procedural pathway for POST to study whether any changes or additions should be made to the existing elder abuse POST curriculum.

On May 7, 2014, Ms. Lawrence informed us that Mr. Long's proposed amendments have been approved by Dr. Pan and submitted to Legislative Counsel. Ms. Lawrence also informed us that the bill will go on the Suspense File, which means AB 2623 will not be considered until after the state budget has been prepared. Although this is disappointing, this gives us time to work with POST and try to mold the bill into something they can support while still preserving the spirit of protecting elders.

Conclusion

The inspiration for AB 2623 arose from our experiences providing free legal representation to victims of elder abuse at McGeorge's Elder Law Clinic. As we studied the problem, we identified two areas ripe for improvement: law enforcement training and mandatory reporting of elder abuse. Throughout the year long process of developing the bill, gathering support, and shepherding it through the Assembly, we gained an incredibly detailed view of the legislative process in Sacramento. Even though AB 2623 will be on the Suspense File, Dr. Pan's staff is skilled and dedicated and we will continue to help as much as we can after we graduate. In addition to gaining valuable real world experience in the legislative advocacy process, we hope that we have made a difference in the fight against the silent crime of elder abuse.