

AMENDED IN SENATE JULY 1, 2014
AMENDED IN SENATE JUNE 11, 2014
AMENDED IN ASSEMBLY MAY 23, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
AMENDED IN ASSEMBLY MARCH 19, 2014
AMENDED IN ASSEMBLY MARCH 11, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2034

Introduced by Assembly Member Gatto

February 20, 2014

An act to ~~amend Section 15657.03 of~~ *add Section 2361 to the Probate Code, and to add Section 15657.035 to the Welfare and Institutions Code, relating to* ~~protective orders~~ *elder and dependent adults.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2034, as amended, Gatto. ~~Family relations: family visitation: protective orders.~~ *Elder and dependent adults.*

Existing law requires the conservator of a person to be responsible for the care, custody, control, and education of the conservatee, except when the court, in its discretion, limits the powers and duties of the conservator, as specified.

This bill would require the conservator of an elder or dependent adult to inform the relatives of the conservatee whenever the conservatee dies or is admitted to a medical facility for acute care for a period of 3 days or more and would require the conservator, in the event of death

of the conservatee, to inform the relatives of any funeral arrangements and the location of the conservatee's final resting place.

Existing law authorizes a conservator or a trustee of an elder or dependent adult, an attorney-in-fact of an elder or dependent adult, a person appointed as a guardian ad litem for an elder or dependent adult, or another person legally authorized to seek a protective order on behalf of an elder or dependent adult who has suffered 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.

~~This bill would additionally allow a petition to be brought by an adult child of an abused for a protective order by a relative of an elder or dependent adult to enjoin a party from interfering with visitation between the adult child and the abused elder or dependent adult when an elder or dependent adult has suffered abuse in the form of isolation, as defined, and person from keeping the elder or dependent adult in isolation from contact with the relative. The bill would allow a court to make an order enjoining a party from isolating or otherwise interfering with the visitation of the abused elder or dependent adult to restrain any person for the purpose of preventing a recurrence of abuse upon proof of a past act or acts of isolation and upon a showing that the elder or dependent adult desires contact with the relative.~~

~~The bill would require the court to appoint counsel for the abused elder or dependent adult and would require the appointed counsel to be paid for by the adult child who brings the petition allow the court to award court costs and attorney's fees to the prevailing party. The bill would require information on any protective order issued pursuant to these provisions to be transmitted to the Department of Justice, as provided. The bill would require the appointed counsel to submit a report to the court regarding whether the abused elder or adult desires the proposed visitation, among other things. The bill would require this report to be confidential, except as provided, and would make legislative findings and declarations regarding the privacy interests affected by the reports that are protected by the bill. the county adult protective services or local law enforcement agency in the county where the proposed visatee resides to investigate a complaint of isolation and to prepare a report to be provided to the court stating, among other things, whether the proposed visatee desires contact from the relative. The bill would require, on request of the relative, any law enforcement officer~~

who is present at the scene of reported abuse to serve a protective order issued pursuant to these provisions on the restrained person. By increasing the duties of county adult protective services and local law enforcement agencies, this bill would impose a state-mandated local program.

Because a violation of a court order issued pursuant to the above provisions would be punishable as contempt, a misdemeanor, this bill would create a new crime and would thereby impose a state-mandated local program.

~~This bill would make a legislative finding that declares every adult in this state has the right to visit with, and receive mail and telephone or electronic communication from, whomever he or she so chooses, unless a court has specifically ordered otherwise.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2361 is added to the Probate Code, to
2 read:

3 2361. A conservator of an elder or dependent adult shall inform
4 the relatives of the conservatee, as listed in subdivision (b) of
5 Section 1821, whenever the conservatee dies or is admitted to a
6 medical facility for acute care for a period of three days or more.
7 In the case of death, the conservator shall inform the relatives of

1 any funeral arrangements and the location of the conservatee’s
2 final resting place.

3 SEC. 2. Section 15657.035 is added to the Welfare and
4 Institutions Code, to read:

5 15657.035. (a) A petition may be brought for a protective
6 order to enjoin a respondent from keeping a proposed visitee in
7 isolation from contact with the petitioner.

8 (b) For the purposes of this section:

9 (1) “Isolation” has the same meaning as defined in Section
10 15610.43.

11 (2) “Petitioner” means a person who is a relative in the first
12 degree of the proposed visitee.

13 (3) “Proposed visitee” means the elder or dependent adult, who
14 is under the care or custody of the respondent, to be protected by
15 the protective order and, if the court grants the petition, the
16 protected person.

17 (4) “Protective order” means an order enjoining a party from
18 keeping the proposed visitee in isolation from contact with the
19 petitioner that is issued after notice and hearing, or in a judgment,
20 and may include terms of visitation.

21 (5) “Respondent” means the person against whom the protective
22 order is sought and, if the petition is granted, the restrained person.

23 (c) (1) An order may be issued under this section to restrain
24 any person for the purpose of preventing a recurrence of abuse,
25 if a declaration shows, to the satisfaction of the court, reasonable
26 proof of a past act or acts of isolation of the proposed visitee from
27 contact with the petitioner, and upon a showing that the proposed
28 visitee desires contact with the petitioner or that visitation is in
29 the best interests of the proposed visitee.

30 (2) Proof of the proposed visitee’s desire for contact with the
31 petitioner may be shown by a report issued by the county adult
32 protective services agency or law enforcement, pursuant to
33 subdivision (e), in the county where the proposed visitee resides.

34 (3) If the proposed visitee resides in a long-term care facility,
35 as defined in Section 9701 of this code, or a residential facility,
36 as defined in Section 1502 of the Health and Safety Code, then an
37 order shall not be issued under this section, and Section 483.10
38 of Title 42 of the Code of Federal Regulations shall apply.

39 (4) The order may specify the frequency, time, place, and
40 location of visitation.

1 (5) *In deciding whether visitation with the petitioner is in the*
2 *best interest of the proposed visitee, the court may consider*
3 *whether the best interest of the proposed visitee requires that any*
4 *visitation by the petitioner be limited to situations in which a third*
5 *person, specified by the court, is present, or whether visitation*
6 *shall be suspended or denied. The petitioner, proposed visitee, or*
7 *respondent may submit to the court the name of a person who may*
8 *be suitable to be present during visitation.*

9 (6) *In deciding whether visitation with the petitioner is in the*
10 *best interest of the proposed visitee, the court shall consider any*
11 *prior protective orders issued against the petitioner to protect the*
12 *proposed visitee.*

13 (d) *The court may require the proposed visitee, or the proposed*
14 *visitee's attorney, to appear at the hearing. If the proposed visitee*
15 *does not have an attorney, the court shall appoint an attorney to*
16 *represent the proposed visitee's interests.*

17 (e) *Upon receipt of a complaint of isolation from a petitioner*
18 *or upon court order, and within 20 days of receipt of the complaint*
19 *or court order, the county adult protective services or local law*
20 *enforcement agency, pursuant to subdivision (b) of Section 15650,*
21 *in the county where the proposed visitee resides, shall investigate*
22 *the complaint. The county adult protective services or local law*
23 *enforcement agency shall prepare a report, to be provided to the*
24 *petitioner and court that states, along with any findings pursuant*
25 *to paragraphs (1) through (3), inclusive, of subdivision (d) of*
26 *Section 15763, whether the proposed visitee is under the care or*
27 *control of the respondent or otherwise unable to provide for his*
28 *or her own physical care, and whether the proposed visitee desires*
29 *contact from the petitioner.*

30 (f) *Within 21 days, or, if good cause appears to the court, 25*
31 *days from the date that the petition is filed, a hearing shall be held*
32 *on the petition.*

33 (g) *The respondent may file a response that explains or denies*
34 *the alleged abuse.*

35 (h) *The court shall issue an order only after notice and a hearing*
36 *under this section, and the court shall not issue an ex parte order*
37 *under this section.*

38 (i) *In the discretion of the court, an order issued after notice*
39 *and a hearing under this section may have a duration of not more*
40 *than five years, subject to termination or modification by further*

1 order of the court either on written stipulation filed with the court
2 or on the motion of a party. These orders may be renewed, upon
3 the request of a party, either for five years or permanently, without
4 a showing of any further abuse since the issuance of the original
5 order, subject to termination or modification by further order of
6 the court either on written stipulation filed with the court or on
7 the motion of a party. The request for renewal may be brought at
8 any time within the three months before the expiration of the
9 orders. The failure to state the expiration date on the face of the
10 form creates an order with a duration of three years from the date
11 of issuance.

12 (j) Upon the filing of a petition for a protective order under this
13 section, the respondent shall be personally served with a copy of
14 the petition, notice of the hearing, any declarations in support of
15 the petition, and any report submitted to the petitioner pursuant
16 to subdivision (e). Service shall be made at least five days before
17 the hearing.

18 (k) A notice of hearing under this section shall notify the
19 respondent that if he or she does not attend the hearing, the court
20 may make orders against him or her that could last up to five years.

21 (l) The Judicial Council form for protective orders issued
22 pursuant to this section shall contain a statement in substantially
23 the following form:

24
25 “If you have been personally served with a notice of hearing,
26 but you do not appear at the hearing either in person or by a
27 lawyer, a copy of the restraining order will be served on you by
28 mail at the following address: _____.

29 If that address is not correct or you wish to verify the issuance
30 of a restraining order at the hearing and to find out the duration
31 of that order, contact the clerk of the court.”

32
33 (m) (1) Information on any protective order relating to elder
34 or dependent adult abuse issued by a court pursuant to this section
35 shall be transmitted to the Department of Justice in accordance
36 with either paragraph (2) or (3).

37 (2) The court shall order the petitioner or the attorney for the
38 petitioner to deliver a copy of an order issued under this section,
39 or a reissuance, extension, modification, or termination of the
40 order, and any subsequent proof of service, by the close of the

1 *business day on which the order, reissuance, extension,*
2 *modification, or termination was made, to each law enforcement*
3 *agency having jurisdiction over the residence of the petitioner,*
4 *and to any additional law enforcement agencies within the court's*
5 *discretion as are requested by the petitioner.*

6 *(3) Alternatively, the court or its designee shall transmit, within*
7 *one business day, to law enforcement personnel all information*
8 *required under subdivision (b) of Section 6380 of the Family Code*
9 *regarding any order issued under this section, or a reissuance,*
10 *extension, modification, or termination of the order, and any*
11 *subsequent proof of service, by either one of the following methods:*

12 *(A) Transmitting a physical copy of the order or proof of service*
13 *to a local law enforcement agency authorized by the Department*
14 *of Justice to enter orders into the California Law Enforcement*
15 *Telecommunications System (CLETS).*

16 *(B) With the approval of the Department of Justice, entering*
17 *the order or proof of service into CLETS directly.*

18 *(4) Each appropriate law enforcement agency shall make*
19 *available information as to the existence and current status of*
20 *these orders to law enforcement officers responding to the scene*
21 *of reported abuse.*

22 *(5) An order issued under this section shall, on request of the*
23 *petitioner, be served on the respondent, whether or not the*
24 *respondent has been taken into custody, by any law enforcement*
25 *officer who is present at the scene of reported abuse involving the*
26 *parties to the proceeding. The petitioner shall provide the officer*
27 *with an endorsed copy of the order and a proof of service, which*
28 *the officer shall complete and send to the issuing court.*

29 *(6) Upon receiving information at the scene of an incident of*
30 *abuse that a protective order has been issued under this section,*
31 *or that a person who has been taken into custody is the respondent*
32 *to that order, if the petitioner cannot produce an endorsed copy*
33 *of the order, a law enforcement officer shall immediately attempt*
34 *to verify the existence of the order.*

35 *(7) If the law enforcement officer determines that a protective*
36 *order has been issued, but not served, the officer shall immediately*
37 *notify the respondent of the terms of the order and where a written*
38 *copy of the order can be obtained, and the officer shall at that time*
39 *also enforce the order. The law enforcement officer's verbal notice*
40 *of the terms of the order shall constitute service of the order and*

1 is sufficient notice for the purposes of this section and for the
2 purposes of Section 273.6 of the Penal Code.

3 (n) Nothing in this section shall preclude any party, including
4 the proposed visatee, from representation by private counsel or
5 from appearing on the party’s own behalf.

6 (o) The prevailing party in any action brought under this section
7 may be awarded court costs and attorney’s fees, if any. The
8 nonprevailing party may also be required to pay the fees of the
9 proposed visatee’s attorney, whether or not court-appointed, and
10 court costs.

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution for certain
13 costs that may be incurred by a local agency or school district
14 because, in that regard, this act creates a new crime or infraction,
15 eliminates a crime or infraction, or changes the penalty for a crime
16 or infraction, within the meaning of Section 17556 of the
17 Government Code, or changes the definition of a crime within the
18 meaning of Section 6 of Article XIII B of the California
19 Constitution.

20 However, if the Commission on State Mandates determines that
21 this act contains other costs mandated by the state, reimbursement
22 to local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, June 11, 2014. (JR11)**