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SB-338 Senior and disability victimization: law enforcement policies. (2019-2020)

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Senate Bill No. 338

CHAPTER 641

An act to amend Section 368.5 of, and to add Section 368.6 to, the Penal Code, and to amend Section 15650 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 338, Hueso. Senior and disability victimization: law enforcement policies.

Existing law makes it a crime for a person entrusted with the care or custody of any elder or dependent adult to willfully cause the elder or dependent adult to be injured or permit the elder or dependent adult to be placed in a situation in which the elder or dependent adult's person or health is endangered. Existing law also authorizes county adult protective services agencies and local long-term care ombudsman programs to investigate elder and dependent adult abuse, but grants law enforcement agencies the exclusive responsibility for criminal investigations. Existing law requires local law enforcement agencies and long-term care ombudsman programs to revise or include in their policy manuals, as defined, specified information regarding elder and dependent adult abuse.

This bill would eliminate the duty imposed on long-term care ombudsman programs to revise or include in their policy manuals specified information regarding elder and dependent adult abuse. The bill would also authorize local law enforcement agencies to adopt a policy regarding senior and disability victimization, as defined. The bill would require, if a local law enforcement agency adopts or revises a policy regarding elder or dependent adult abuse or senior and disability victimization on or after April 13, 2021, that the policy include specified provisions, including provisions related to enforcement and training. The bill would also make clarifying changes to provisions related to the entities that have jurisdiction to investigate elder and dependent adult abuse.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) It is the intent of the Legislature in enacting this act to accomplish each of the following:

- (1) List in one place all of law enforcement agencies' statutory powers and responsibilities that are particular to protecting senior citizens, and adults and children with disabilities, while making no changes in these powers and responsibilities.
- (2) Draw the attention of law enforcement agencies and the public to the wide extent of abuse, sexual assault, hate crimes, domestic violence, human trafficking, and other serious crimes against adults and children with disabilities, including disabilities caused by advanced age.
- (3) Reinforce understanding of the fact that elder and dependent adult abuse is a crime, not merely a civil matter.

(4) Strongly encourage every local law enforcement agency to adopt a comprehensive policy concerning these crimes, including effective, accountable, and locally developed protocols for carrying out the agency's existing responsibilities.

(5) Build greater cooperation and collaboration among law enforcement agencies and other agencies with overlapping responsibilities for response to, and investigation of, these crimes, making no change in those responsibilities, while also reinforcing that law enforcement agencies retain exclusive responsibility for criminal investigations.

(6) Increase respect for, and protection of, people with disabilities by further clarifying that the statutory terms "dependent adult" and "dependent person" extend legal protections to many people with disabilities regardless of the fact that they live independently.

(b) The Legislature finds and declares all of the following:

(1) The reported rate of serious violent victimization of people with disabilities 12 years of age and above, including disabilities caused by advanced age, is more than 3.4 times that of those with no disabilities nationally. For those with cognitive disabilities including intellectual disabilities and dementia, the rate is more than 5.5 times that of those with no disabilities.

(2) The reported rate of rape and sexual assault of people with disabilities 12 years of age and above is 3.5 times that of those without disabilities. The rate for people with intellectual disabilities is seven times more than those with no disabilities.

(3) Having a disability puts both women and men at greater risk of intimate partner violence.

(4) Crimes motivated by bias against people with disabilities, including disabilities caused by advanced age, have been justifiably called the invisible hate crimes. Victims report an estimated 40,000 antidisability hate crimes per year nationally, while the number reported by law enforcement agencies is less than 100. In California in 2017, law enforcement agencies reported just four antidisability hate crimes. These disability-biased hate crimes often involve extraordinary sadism.

(5) More than 60.4 percent of violent crimes against people with disabilities 12 years of age and above are reportedly committed by perpetrators the victims know, often including both paid and unpaid caretakers.

(6) Most of the figures cited in this subdivision are likely to be undercounts because they are derived from the National Crime Victimization Survey, which omits crimes in group homes, hospitals, and other institutions.

SEC. 2. Section 368.5 of the Penal Code is amended to read:

368.5. (a) Local law enforcement agencies and state law enforcement agencies with jurisdiction have concurrent jurisdiction to investigate elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities.

(b) 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, if consistent with federal law; however, law enforcement agencies retain exclusive responsibility for criminal investigations, notwithstanding any law to the contrary.

(c) (1) Every local law enforcement agency shall, when the agency 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:

(A) The elements of the offense specified in subdivision (c) of Section 368.

(B) The elements of the offense specified in subdivision (f) of Section 368.

(C) The requirement, pursuant to subdivisions (a) and (b), 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 and consistent with federal law, assist law enforcement agencies with criminal investigations.

(D) 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."

(2) As used in this subdivision, the following terms have the following meanings:

(A) "Local law enforcement agency" means every municipal police department and county sheriffs' department.

(B) "Policy manual" means any general orders, patrol manual, duty manual, or other written document or collection of documents that provides field or investigative personnel with policies, procedures, or guidelines for responding to or investigating crimes, complaints, or incidents.

SEC. 3. Section 368.6 is added to the Penal Code, to read:

368.6. (a) This section shall be known, and may be cited, as the Senior and Disability Justice Act.

(b) As used in this section, the following terms have the following meanings:

(1) "Agency protocol" means a procedure adopted by a local law enforcement agency consistent with the agency's organizational structure, and stated in a policy adopted pursuant to this section, to effectively and accountably carry out a particular agency responsibility.

(2) "Caretaker" has the same meaning as defined in Section 368 and includes caretakers whether or not they are paid.

(3) "Dependent adult" has the same meaning as defined in Section 368.

(4) "Dependent person" has the same meaning as defined in Section 288.

(5) "Disability" includes mental disability and physical disability as defined in Sections 12926 and 12926.1 of the Government Code, regardless of whether those disabilities are temporary, permanent, congenital, or acquired by heredity, accident, injury, illness, or advanced age.

(6) "Domestic violence" has the same meaning as defined in Section 13700 and includes a violation of Section 273.5.

(7) "Elder" has the same meaning as defined in Section 368.

(8) "Elder and dependent adult abuse" means a violation of Section 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.

(9) "Hate crime" has the same meaning as set forth in Sections 422.55 and 422.56.

(10) "Human trafficking" means a violation of Section 236.1.

(11) "Local law enforcement agency" means every municipal police department and county sheriffs' department.

(12) "Mandated reporting requirements" means any of the following:

(A) The requirements of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4.

(B) The requirements of Sections 15630 and 15630.1 and subdivision (d) of Section 15640 of the Welfare and Institutions Code concerning reporting of elder and dependent adult abuse.

(C) The prohibitions on inhibiting or impeding reporting pursuant to the requirements in subparagraph (A) or (B).

(13) "Senior and disability victimization" means any of the following:

(A) Elder and dependent adult abuse.

(B) Unlawful interference with a mandated report.

(C) Homicide of an elder, dependent adult, or other adult or child with a disability.

(D) Sex crimes against elders, dependent adults, or other adults and children with disabilities.

(E) Child abuse of children with disabilities.

(F) Violation of relevant protective orders.

(G) Hate crimes against persons with actual or perceived disabilities, including, but not limited to, disabilities caused by advanced age, or those associated with them.

(H) Domestic violence against elders, dependent adults, and adults and children with disabilities, including disabilities caused by advanced age.

(14) "Relevant protective order" means an order by a California or out-of-state court, including, but not limited to, a tribal, federal, United States territorial, or United States military court, protecting an elder, dependent adult, dependent person, or

other adult or child with a disability.

(15) "Responsible agency" means a local, state, or federal agency with responsibilities concerning senior and disability victimization. This includes, but is not limited to, law enforcement agencies, adult protective services agencies, child protective services agencies, the Office of the State Long-Term Care Ombudsman and its designated local agencies, fire and emergency medical services, regional centers pursuant to the Lanterman Developmental Disabilities Services Act, elder and disability service agencies, sexual assault and domestic violence agencies, elder and dependent adult death review teams, local government human relations commissions, coroners, probate court investigators, public administrators, public guardians, public conservators, district attorney's offices, city attorney's offices or other prosecutors with jurisdiction, the Bureau of Medi-Cal Fraud and Elder Abuse, state licensing agencies, the United States Attorney's offices, and the Federal Bureau of Investigation.

(16) "Sex crime" means (A) an offense requiring registration pursuant to the Sex Offender Registration Act or (B) a violation of Section 729 of the Business and Professions Code.

(17) "State protection and advocacy agency" means the agency designated pursuant to Division 4.7 (commencing with Section 4900) of the Welfare and Institutions Code.

(18) "Unlawful interference in a mandated report" includes, but is not limited to, inhibiting or impeding reporting in violation of the mandated reporting requirements or a violation of Section 136.1 that concerns the mandated reporting requirements.

(c) Each local law enforcement agency may adopt a policy regarding senior and disability victimization. A municipal police department or county sheriffs' department that adopts or revises a policy regarding elder and dependent adult abuse or senior and disability victimization on or after April 13, 2021, shall include, but not be limited to, all of the following items:

(1) Information on the wide prevalence of elder and dependent adult abuse, sexual assault, other sex crimes, hate crimes, domestic violence, human trafficking, and homicide against adults and children with disabilities, including disabilities caused by advanced age, and including those crimes often committed by caretakers.

(2) A statement of the agency's commitment to providing equal protection and demonstrating respect for all persons regardless of age or disabilities, and to conscientiously enforcing all criminal laws protecting elders, and adults and children with disabilities, regardless of whether these crimes also carry civil penalties.

(3) The definitions and elements of the offenses specified in paragraph (2) of subdivision (b) of Section 288 and in subdivisions (c) and (f) of Section 368, noting that they protect many persons with disabilities regardless of the fact they live independently.

(4) (A) The fact that elder and dependent adult abuse, sex crimes, child abuse, domestic violence, and any other criminal act, when committed in whole or in part because of the victim's actual or perceived disability, including disability caused by advanced age, is also a hate crime.

(B) In recognizing suspected disability-bias hate crimes, the policy shall instruct officers to consider whether there is any indication that the perpetrator committed the criminal act because of bias, including, but not limited to, the bias motivations described in subparagraphs (B) and (C) of paragraph (3) of subdivision (a) of Section 422.87.

(5) An agency protocol and schedule for training officers with both of the following:

(A) The training materials made available by the Commission on Peace Officer Standards and Training pursuant to Sections 13515, 13515.25, 13515.27, 13515.28, 13515.29, 13515.295, 13515.30, 13515.35, and 13519.2. In the case of the training materials identified in each of these sections, the agency protocol shall require the training for, at a minimum, the category of officers for whom that section states that the training is intended or required or, if the section does not state for whom the training material is required or intended, those officers identified pursuant to paragraph (16).

(B) The agency's policy pursuant to this section.

(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 as defined in Section 754 of the Evidence Code. The agency shall have a protocol for securing the services of the interpreter to ensure accurate interpretation.

(7) An agency protocol for providing appropriate training concerning the agency's policy to dispatchers, community services officers, front desk personnel, and other civilian personnel who interact with the public.

(8) (A) 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 matters or for any other reason without an investigation.

(B) An appendix to the policy describing the requirements for these investigations, including, but not limited to, all of the following:

(i) An agency protocol or protocols for cooperating and collaborating whenever possible with the Bureau of Medi-Cal Fraud and Elder Abuse, other state law enforcement agencies with jurisdiction, adult and child protective services, local long-term care ombudsman programs, and, when appropriate, other responsible agencies.

(ii) Appropriate techniques for interviewing potential victims and witnesses with cognitive or communication disabilities, including, but not limited to, avoiding repeated interviews when possible.

(iii) The elements of the investigation, including, but not limited to, all of the following:

(I) Checking prior reports received by adult or child protective services agencies, local long-term care ombudsman programs, except as provided in Section 9725 of the Welfare and Institutions Code, and any other responsible agencies.

(II) Interviewing each alleged victim, each witness, and each suspect who is available.

(III) Viewing all body-worn camera videos and all other films.

(IV) Listening to all calls from mandated reports or other callers.

(V) Making reasonable efforts to determine whether any person committed unlawful interference in a mandated report.

(iv) An agency protocol for transmitting the crime report to the appropriate prosecution office if the law enforcement agency recommends prosecution.

(v) If the agency deems it appropriate, the Investigation Response section and Addendum B of the San Diego County Elder and Dependent Adult Abuse Blueprint or the Elder Abuse Guide for Law Enforcement of the National Center on Elder Abuse at the University of Southern California.

(9) (A) A statement that it is the agency's policy to make arrests or to seek arrest warrants, in accordance with Section 836, and, in the case of domestic violence, as allowed by Section 13701. The policy shall also state the agency protocol for seeking those arrest warrants.

(B) The agency protocol for arrests for senior and disability victimization other than domestic violence, which shall include, but not be limited to, the following requirements:

(i) In the case of a senior and disability victimization committed in an officer's presence, including, but not limited to, a violation of a relevant protective order, the officer shall make a warrantless arrest based on probable cause when necessary or advisable to protect the safety of the victim or others.

(ii) In the case of a felony not committed in an officer's presence, the officer shall make a warrantless arrest based on probable cause when necessary or advisable to protect the safety of the victim or others.

(iii) In the case of a misdemeanor not committed in the officer's presence, including, but not limited to, misdemeanor unlawful interference with a mandated report or a misdemeanor violation of a relevant protective order, or when necessary or advisable to protect the safety of the victim or others, the agency shall seek an arrest warrant based on probable cause.

(iv) The policy shall state the agency protocol for seeking arrest warrants based on probable cause for crimes for which no arrest has been made.

(10) The fact that senior and disability victimization crimes are also domestic violence subject to the mandatory arrest requirements of Section 836 if they meet the elements described in Section 273.5, including, but not limited to, a violation by a caretaker or other person who is or was a cohabitant of the victim, regardless of whether the cohabitant is or was a relative of, or in an intimate personal relationship with, the victim.

(11) (A) The fact that many victims of sexual assault and other sex crimes delay disclosing the crimes for reasons including, but not limited to, shame, embarrassment, self-doubt, fear of being disbelieved, and fear of retaliation by the perpetrator or others.

(B) An instruction pursuant to Sections 264.2 and 679.04 to notify potential victims of sex crimes that they have a right to have a support person of their choice present at all times.

(12) The agency's cross-reporting requirements, including, but not limited to, those pursuant to Section 15640 of the Welfare and Institutions Code, and an agency protocol for carrying out these cross-reporting requirements.

(13) Mandated reporting requirements, including, but not limited to, officers' mandated reporting responsibilities and an agency protocol for carrying out the officers' mandated reporting responsibilities.

(14) The fact that victims and witnesses with disabilities, including cognitive and communication disabilities, can be highly credible witnesses when interviewed appropriately by trained officers or other trained persons.

(15) A procedure for first-responding officers to follow when interviewing persons with cognitive and communication disabilities until officers, or staff of other responsible agencies, with more advanced training, are available. The procedure shall include an instruction to avoid repeated interviews whenever possible.

(16) The unit or office, or multiple units or offices of the agency, or the title or titles of an officer or officers, tasked with the following responsibilities:

(A) Receiving advanced officer training on senior and disability victimization, available from the Commission on Peace Officer Standards and Training, the United States Department of Justice, the Disability and Abuse Project of the Spectrum Institute, or other sources.

(B) Acting as a liaison to other responsible agencies to increase cooperation and collaboration among them while retaining the law enforcement agency's exclusive responsibility for criminal investigations.

(C) Reaching out to the senior and disability communities and to the public to encourage prevention and reporting of senior and disability victimization.

(17) An agency protocol for seeking emergency protective orders by phone from a court at any time of the day or night pursuant to subdivision (d) of Section 6250 of the Family Code, including the court system telephone number for an officer to call, and a requirement that an officer utilize the agency protocol whenever necessary or advisable to protect a victim's safety.

(18) 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, and not to assume that the death of an elder or person with a disability is natural simply because of the age or disability of the deceased.

(19) 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, and if the order does so, a requirement that the officer shall make reasonable efforts to do each of the following:

(A) Inquire whether the restrained person possesses firearms. The officer may make this effort by asking the restrained person and the protected person.

(B) Query through the California Law Enforcement Telecommunications System to determine if any firearms are registered to the restrained person.

(C) Receive or seize prohibited firearms located in plain view or pursuant to a consensual or other lawful search, in compliance with Division 4 (commencing with Section 18250) of Title 2 of Part 6.

(20) Civil remedies and resources available to victims, including, but not limited to, the program administered by the California Victim Compensation Board.

(21) The complete contents of any model policy on senior and disability victimization that the Commission on Peace Officer Standards and Training may develop based on this section, regardless of whether that model policy includes items in addition to those listed in this section.

(22) 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."

(23) A detailed checklist of first-responding officers' responsibilities, including, but not limited to, all of the following:

(A) Taking responsibility for the safety and well-being of the potential victims and witnesses and treating all potential victims, witnesses, and suspects with dignity and respect.

(B) Complying with the provisions of the agency's policy requirements for arrests and mandatory seeking of arrest warrants pursuant to paragraph (9) and the requirements for seeking emergency protective orders pursuant to paragraph (17).

(C) Following the policy's guidelines for interviewing persons with cognitive or communication disabilities pursuant to paragraph (15).

(D) Recognizing that some elders and adults and children with cognitive or communication disabilities may have difficulty narrating events, appear to be poor historians, or lack short-term memory, which adds to their vulnerability and therefore requires officers to make special efforts to provide them with equal protection.

(E) Documenting the scene.

(F) Obtaining a signed medical release from potential victims.

(G) Interviewing caretakers separately, recognizing that in some cases, the caretaker is the perpetrator.

(H) Recognizing that victim cooperation is sometimes unnecessary for prosecution, and that in some cases allowing victims the option of preventing prosecution creates an opportunity for the perpetrators to obstruct justice by pressuring or threatening the victims. Each dispatch call or case should be investigated on its own evidential merits.

(I) Taking other actions necessary to comply with the provisions of the law enforcement agency's policy pursuant to this section.

(24) The relevant content of any memoranda of understanding or similar agreements or procedures for cooperating with other responsible agencies, consistent with Section 368.5.

(25) A statement of the agency chief executive's responsibilities, including, but not limited to, all of the following:

(A) Taking leadership within the agency and in the community, including by speaking out publicly in major cases of senior and disability victimization, to assure the community of the agency's support for the victims and their families and for others in the community who are terrorized and traumatized by the crimes, and to encourage victims and witnesses to the crimes or similar past or future crimes to report those crimes to help bring the perpetrators to justice and prevent further crimes.

(B) Carrying out specific responsibilities pursuant to this subdivision, including, but not limited to, developing and including agency protocols in this policy.

(C) Ensuring that all officers and staff carry out their responsibilities under the policy.

(26) 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.

(27) (A) 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.

(B) A responsible officer who makes a determination allowing a deviation from the policy shall produce a report to the agency's chief executive 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. The chief executive shall retain the report for a minimum of five years and shall make it available to the state protection and advocacy agency upon request.

(28) 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.

(d) If a law enforcement agency adopts or revises a policy regarding senior and disability victimization on or after April 13, 2021, the chief executive shall make it available to the state protection and advocacy agency upon request.

SEC. 4. Section 15650 of the Welfare and Institutions Code is amended to read:

15650. (a) Investigation of reports of known or suspected instances of abuse in long-term care facilities shall be the responsibility of the bureau, the local law enforcement agency, and the long-term care ombudsman program.

(b) Investigations of known or suspected instances of abuse outside of long-term care facilities shall be the responsibility of the county adult protective services agency, unless another public agency is given responsibility for investigation in that jurisdiction, and the local law enforcement agency.

(c) The investigative responsibilities set forth in this section are in addition to, and not in derogation of or substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Public Health Licensing and Certification Division and their authorized representatives.

(d) Other public agencies involved in the investigation of abuse or advocacy of respective client populations, or both, include, but shall not be limited to, the State Department of State Hospitals and the State Department of Developmental Services. Other public agencies shall conduct or assist in, or both, the investigation of reports of abuse of elder and dependent adults within their jurisdiction in conjunction with county adult protective services, local ombudsman programs, and local law enforcement agencies.

(e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

(f) Each local ombudsman program shall maintain an inventory of all public and private agencies available to assist long-term care residents who are victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer cases of abuse in the event that another agency has jurisdiction over the resident, the abuse is verified and further investigation is needed by a law enforcement or licensing agency, or the program does not have sufficient resources to provide immediate assistance. The intent of this section is to acknowledge that ombudsman responsibility in abuse cases is to receive reports, determine the validity of reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.

(g) The responsibilities and jurisdiction granted by this section to the entities described in subdivisions (a) to (d), inclusive, are subject to the responsibility and jurisdiction granted pursuant to Section 368.5 of the Penal Code. The legislature finds and declares that this subdivision is declaratory of existing law.