

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 15, 2017

TO: The Honorable Representative Dee Morikawa, Chair  
House Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 199 – RELATING TO ADULT PROTECTIVE SERVICES**

Hearing: Wednesday, February 15, 2017, 9:00 a.m.  
Conference Room 329, State Capitol

**DEPARTMENT'S POSITION:** Department of Human Services (DHS) appreciates the intent of this bill, and offers comments.

**PURPOSE:** The purpose of the bill is to authorize Department of Human Services (DHS) to investigate allegations of the physical isolation of vulnerable adults and take corrective action including obtaining judicial relief.

Creation of "physical isolation" as a new type of abuse, and inserting the definition of "physical isolation" within section 346-222, Hawaii Revised Statutes (HRS), are not necessary for the following reasons. Adult Protective Services (APS) investigators assess whether physical isolation of the vulnerable adult by the alleged perpetrator is present in all types of abuse. Isolation may serve to conceal abuse or prevent access to the vulnerable adult's support system. APS policy and procedures address the forced isolation of vulnerable adults. Any finding of isolation may serve as evidence to support the allegation of abuse, regardless of the type of abuse.

Current definitions of section 346-222, HRS, mandate APS to investigate the various types of abuse, which may involve physical isolation of the vulnerable adult.

For example, section 346-222, HRS, currently defines psychological abuse as "the infliction of mental or emotional distress by use of threats, insults, harassment, humiliation, provocation, intimidation, or other means that profoundly confuse or frighten a vulnerable adult." This definition includes profound confusion or fear due to physical isolation of the vulnerable adult.

In addition, section 346-222, HRS, authorizes DHS to investigate allegations of financial exploitation, which "may be accomplished through coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence." Undue influence often involves isolating the victim from others.

In state fiscal year 2016, APS investigated 861 reports of vulnerable adult abuse, including poly-abuse (more than one type of abuse). Excluding self-neglect, 351 investigations involved caregiver neglect, 206 involved financial exploitation, 139 involved psychological abuse, 99 involved physical abuse, and 12 involved sexual abuse. Of the 206 investigations of financial exploitation, 49 investigations also involved caregiver neglect, 30 also involved psychological abuse, and 9 also involved physical abuse.

APS investigations already include an assessment of reasonable treatment of the vulnerable adult. The current statutory mandate is to investigate alleged abuse of vulnerable adults, instead of disputes about what reasonable interactions may be. Such disputes may not involve abuse and may be more appropriately addressed through other means than an APS investigation.

If the term "physical isolation" is to remain in the proposed language for section 346-222, HRS, we recommend that the following definition be used in its place, and further recommend that the proposed amendment to the definition of "caregiver neglect" be deleted in its entirety. We suggest the following language:

""Physical isolation" means denial of the ability and means to communicate, visit, or interact with family, friends, and care providers. Physical isolation shall not include an act reasonably intended to protect the physical or mental welfare of the vulnerable adult, such as through protective orders, treatment plans, or instructions of the vulnerable adult's physician or other health care professional."

Thank you for the opportunity to testify on this bill.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



KIRK CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

CARY OKIMOTO  
JERRY INOUE  
DEPUTY CHIEFS

OUR REFERENCE WO-DA

February 15, 2017

The Honorable Dee Morikawa, Chair  
and Members  
Committee on Human Services  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 329  
Honolulu, Hawaii 96813

Dear Chair Morikawa and Members:

SUBJECT: House Bill No. 199, Relating to Adult Protective Services

I am Walter Ozeki, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 199, Relating to Adult Protective Services.

By adding the condition of "physical isolation" as a form of abuse, caregiver neglect, and/or psychological abuse to Section 346-222 of the Hawaii Revised Statutes, we acknowledge the damaging effects of physical isolation on the well-being of dependent adults. The change would enable our department to better protect these vulnerable adults against a previously ignored condition.

The HPD urges you to support House Bill No. 199, Relating to Adult Protective Services.

Thank you for the opportunity to testify.

APPROVED:

A handwritten signature in black ink, appearing to be "Cary Okimoto", written over a horizontal line.

Cary Okimoto  
Acting Chief of Police

Sincerely,

A handwritten signature in black ink, appearing to be "Walter Ozeki", written over a horizontal line.

Walter Ozeki, Captain  
Criminal Investigation Division

**todd2 - Chloe**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 7:19 PM  
**To:** HUS testimony  
**Cc:** mlopes@hscadv.org  
**Subject:** Submitted testimony for HB199 on Feb 15, 2017 09:00AM

**HB199**

Submitted on: 2/6/2017

Testimony for HUS on Feb 15, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marci Lopes	Hawaii State Coalition Against Domestic Violence	Support	No

Comments: Elder abuse goes hand in hand with domestic violence. HSCADV supports all efforts to ensure our Kapuna are receiving the services and support that is needed. More education and support needs to be provided to our Kapuna.

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**Accredited ADI Program**

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Kahuku, HI 96731  
Phone: 808-6380200  
info@hawaiifido.org  
www.hawaiifido.org

2-8-17

EIN # 99-0353346

RE: Testimony for HB 199, Hawaii State Legislature 2017

**Executive Director:**  
**Jim Kennedy**

COMMITTEE ON HUMAN SERVICES  
Rep. Dee Morikawa, Chair  
Rep. Chris Todd, Vice Chair

Susan Luehrs  
Founder/Educator  
Certified SD Trainer  
Program Director

February 15, 2017 @ 9am

House Bill 199

**Board of Directors:**

Aloha Rep. Morikawa and Todd,

Dara Fukahara  
Marketing  
Chair

I would like to voice my concern and support for HB 199. I have personally known several adults who have been denied visitation rights due to family differences. It is not only sad for all concerned but devastating for the parent and adult child. Please support this bill to improve and prevent this situation from continuing in Hawaii.

Vicki Kuruhara  
Treasure

Susan Kam  
Secretary

Patricia Storino  
Business Owner

Rosanne Daniels Kanetake  
Counselor Educator

Aloha and Mahalo,

*Susan Luehrs*  
Susan Luehrs  
Program Director

# MacDonaldRudy

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## Trust & Estate Litigation Group

Michael D. Rudy, Esq. | [mrudy@macdonaldrudy.com](mailto:mrudy@macdonaldrudy.com)  
Paul A.C. Higa, Esq. | [phiga@macdonaldrudy.com](mailto:phiga@macdonaldrudy.com)  
Sofia Hirose McGuire, Esq. | [smcguire@macdonaldrudy.com](mailto:smcguire@macdonaldrudy.com)  
Jamie C. Young, Esq. | [jyoung@macdonaldrudy.com](mailto:jyoung@macdonaldrudy.com)  
Cheryl R. Ng, Esq. | [cng@macdonaldrudy.com](mailto:cng@macdonaldrudy.com)

February 8, 2017

### Via Hand-Delivery

Committee on Human Services  
Rep. Dee Morikawa, Chair  
Rep. Chris Todd, Vice Chair  
Hawaii State Capitol  
415 S. Beretania Street, Room 305  
Honolulu, Hawaii 96813

Re: House Bill 199; Hearing: February 15, 2017 at 9:00 a.m.

Dear Representatives Morikawa and Todd,

We write this letter in support of House Bill 199 relating to Adult Protective Services. Michael D. Rudy, Esq. is a founding partner of MacDonald Rudy O'Neill & Yamauchi, a Limited Liability Law Partnership, LLP, and the head of the Trust and Estate Litigation Group with thirty years of experience. Paul A. C. Higa, Esq. is an associate and a member of the Trust and Estate Litigation Group who has five years of experience in the substantive area of law.

Over the past few years, we have increasingly come across cases involving elder abuse. While advancements in medicine and technology have led to longer average life spans, it has unfortunately also resulted in our elderly population outliving their mental faculties, making them easily susceptible to undue influence and financial abuse. Often times, these cases involve an improper actor (a family member, caregiver, or some other interloper) who isolates the elderly person from family member, friends, and others. We believe the inclusion of "physical isolation" and its definition as a type of abuse and a form of caregiver neglect in the Adult Protective Services Section of the Hawaii Revised Statutes is a good first step in addressing this rampant problem.

# MacDonaldRudy

Committee on Human Services

February 8, 2017

Page 2

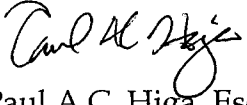
We hope that the enactment of HB 199 will lead to further legislation regarding (1) an adult child's right to visitation with their adult parent(s) and (2) a private right of action against those who commit various types of elder abuse. Currently, a concerned adult child's only recourse is to file for a conservatorship and guardianship over their elderly parent and hope to resolve the related issues of visitation and/or financial abuse within said proceeding. However, because a conservatorship/guardianship proceeding is not intended to deal with these issues, a resolution is not guaranteed.

The ability for Adult Protective Services to investigate and seek judicial relief on behalf of the elderly person is a great step in the right direction. We feel strongly that HB 199 reflects the tradition and values of protecting and respecting our elders. We thank you for your time and consideration in reviewing our letter.

Very truly yours,

*MacDonald Rudy, O'Neill & Yamauchi*

  
Michael D. Rudy, Esq.

  
Paul A.C. Higa, Esq.

**todd2 - Chloe**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 3:54 PM  
**To:** HUSstestimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for HB199 on Feb 15, 2017 09:00AM\*

**HB199**

Submitted on: 2/6/2017

Testimony for HUS on Feb 15, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 6:39 PM  
**To:** HUS testimony  
**Cc:** cchaudron08@gmail.com  
**Subject:** \*Submitted testimony for HB199 on Feb 15, 2017 09:00AM\*

**HB199**

Submitted on: 2/6/2017

Testimony for HUS on Feb 15, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Camila Chaudron	Individual	Support	No

Comments:

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**TRUDI F. GOLD**  
**46-153 Yacht Club Street**  
**Kaneohe, Hawaii. 96744**  
**Ph. cell. (808) 284-3300**

February 9, 2017

TO: Committee On Human Services  
ATTN: Rep. Dee Morikawa & Chris Todd  
Fax # (808) 586-8484

Reference: House Bill 199

Good afternoon Rep. Morikawa & Todd,

I would like to voice my support for HB199. Adult visitation rights should not be withheld due to family differences.

Please support this bill to improve and prevent this situation from continuing in Hawaii.

Thank you.

Aloha,

Trudi Gold  
Concerned Citizen

**todd2 - Chloe**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 13, 2017 7:14 AM  
**To:** HUS testimony  
**Cc:** tampaltin@gmail.com  
**Subject:** \*Submitted testimony for HB199 on Feb 15, 2017 09:00AM\*

**HB199**

Submitted on: 2/13/2017

Testimony for HUS on Feb 15, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tamara Paltin	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 12, 2017 10:36 PM  
**To:** HUS testimony  
**Cc:** kaisakamoto@hawaii.rr.com  
**Subject:** Submitted testimony for HB199 on Feb 15, 2017 09:00AM

**HB199**

Submitted on: 2/12/2017

Testimony for HUS on Feb 15, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lynnette Sakamoto	Individual	Comments Only	No

Comments: COMMITTEE ON HUMAN SERVICES, Rep Dee Morikawa, Chair, Rep Chris Todd, Vice Chair, re HB199, hearing on 2/15/2017 at 9:00am. My name is Lynnette Sakamoto, and I have been a caregiver to my parents for almost 16 years. My Mom passed away at age 94, my Dad is still with me at age 97. I truly believe they stayed healthy and happy for so long, because we socialized a lot--meeting strangers whenever we'd go out, having friends and family over constantly. They'd light up as they told stories or listened to stories. They were mentally and physically better because of this frequent socializing. I feel isolating anyone is a sure way to mental and physical decline, and I hope you will pass HB199 to ensure this does not happen to the vulnerable folks being cared for. Mahalo for your consideration.

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House Committee on Human Services  
February 15, 2017  
9:00am  
Room 329

Re: HB199 Relating to Adult Protective Services  
Position: In Support (As an individual)

Dear Madam Chair Dee Morikawa, Vice Chair Chris Todd, and members of the House Committee on Human Services,

Physical isolation from family and friends is what happens when someone is put in jail.

People in jail are allowed visits by family and friends, at reasonable times.

People so vulnerable as to need caregiver services should have at least the same right to visitation by family and friends as what are allowed incarcerated prisoners.

Please pass HB199.

Thank you.

Jeffrey Akaka, MD  
Psychiatrist

February 13, 2017

RE: Testimony for HB 199, Hawaii State Legislature 2017

COMMITTEE ON HUMAN SERVICES

Rep. Dee Morikawa, Chair

Rep. Chris Todd, Vice Chair

February 15, 2017 @ 9am

HB 199

Aloha Rep. Morikawa and Todd,

I would like to voice my support for House Bill 199.

I have personal experience with being denied visits with my mother who is now 93 years old. The following is a snapshot of my situation.

In November 2011, my mother came to live with me after the passing of my father. In April 2013 she moved to a family member's home to live where she currently resides. Following her move I was prevented from seeing her until I began legal action. In late 2014 I was allowed visitation with my mother by court order. Despite the court order I am given very limited time with my mother, 30 minutes once a week, only on Tuesdays, between specified hours. If I'm unable to make the visit on Tuesday, I cannot reschedule for another day in the week due to rules set in place by the family member.

In June 2016 the visitation rules were changed. Now I am required to hire a caregiver to accompany me on one-hour visits. Each one hour visit costs me \$140, making it financially difficult to schedule regular visits as I am retired and on a fixed income.

The proposed bill is urgently needed to help families experiencing the same or similar situation have rights to visit their adult parent/s without having to hire an attorney and pay thousands of dollars.

Mahalo,

Linda Nagamine

**todd2 - Chloe**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 13, 2017 8:07 PM  
**To:** HUS testimony  
**Cc:** marseel@aol.com  
**Subject:** Submitted testimony for HB199 on Feb 15, 2017 09:00AM

**HB199**

Submitted on: 2/13/2017

Testimony for HUS on Feb 15, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marilyn Seely	Individual	Support	No

Comments: Testimony for HB 199, Hawaii State Legislature From: Marilyn R Seely COMMITTEE ON HUMAN SERVICES Rep. Dee Morikawa, Chair Rep. Chris Todd, Vice Chair February 15, 2017 @ 9am Re: House Bill 199 Position: Strongly support. Chair and members of the committee on human services. Elder abuse is epidemic in the US and growing worse each year. The heartbreaking stories of vulnerable seniors suffering abuse at the hands of their family members and others eager to exploit their naivety and trust is widespread yet appears to remain under the radar in state legislation. This measure will add to our efforts to safeguard our kupuna. Mahalo for considering this request. Marilyn Seely, Kaneohe, Hawaii marseel@aol.com

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**LATE**

**todd2 - Chloe**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 14, 2017 1:59 PM  
**To:** HUS testimony  
**Cc:** pavela@hawaii.edu  
**Subject:** \*Submitted testimony for HB199 on Feb 15, 2017 09:00AM\*

**HB199**

Submitted on: 2/14/2017  
Testimony for HUS on Feb 15, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pavela	Individual	Support	No

Comments:

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**todd2 - Chloe**

**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 15, 2017 7:00 AM  
**To:** HUS testimony  
**Cc:** rkailianu57@gmail.com  
**Subject:** \*Submitted testimony for HB199 on Feb 15, 2017 09:00AM\*

**HB199**

Submitted on: 2/15/2017

Testimony for HUS on Feb 15, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Support	Yes

Comments:

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**LATE**

Representative Dee Morikawa, Chair  
Representative Chris Todd, Vice Chair

Jacqueline Noa-Cameron

Wednesday, February 15, 2017

Support for H.B 199, Relating to Adult Protective Services

Within Hawai'i, one of the most important rules we are founded with is to respect our elders. As we age, this foundation is then generalized to treat others as how we would want to be treated. Throughout the years, this foundation has been lost and there has been an increase in violence throughout the world. With the growth of Social Media, and television shows such as UFC and WWE, violence has become socially acceptable. By completing a simple search of "Hawaii Fights" we are able to witness the effects of Social Media and the influence these shows have on our communities. Unfortunately, with this growth of acceptance, our kupuna and other vulnerable individuals have become susceptible to these acts of violence hence why I am in support of HB 199 Relating to Adult Protective Services, which would include physical isolation in the definition of abuse as well as altering the definition of caregiver neglect.

With the influence of Social Media, we have been able to witness various acts of abuse around the world against elders and other vulnerable individuals. The growth of Social Media has positive effects as well as negative effects. A positive effect Social Media has on it's viewers is the various teachings. Viewers are able to learn how to cook new recipes as well as have an easier access to news outlets. A negative effect that Social Media has is that not all of these teachings are positive. By promoting violence, you are teaching individuals how to outsource their anger in a negative way.

Hawaii is one of the top states with an increased cost of living. A survey was completed in 2016 and the average individual would need to make an income on average \$34.22 just to afford a two bedroom apartment. That is not inclusive of utilities or other necessities. This does not include our car payment, phone bill, electricity, food, clothes, etc... The average individual makes \$14.53 an hour within Hawaii, that's less than half of what is required to afford a two-bedroom housing.

So what's the point? How does this affect the approval of HB 199 in regards to Adult Protective Services? Well, the examples that I provided above is just a fraction of what individuals around Hawaii are dealing with on the daily basis. Hawaii is founded with the Aloha spirit and if you were born here, you were raised with the knowledge of respecting your elders. As your elders age, it becomes your kuleana to take care of them. This can become a burden to any individual. Some individuals realistically take in the responsibility just because they need the money. So what happens when you're raised with the kuleana of taking care of your elders, your struggling financially and dealing with your daily life struggles? There tends to be an anger or rage that builds up and eventually you need to let it out. Majority of individuals turn to violence and even start to despise their kupuna for adding such a burden to their life. Physical abuse may take place, but sometimes it's just not enough, they want someone who is vulnerable to feel the

pain that they feel. The communication between the vulnerable adult and their friends, other relatives would be ceased and the individual would start to experience psychological abuse. This is where HB 199 comes into play. With HB 199, it would highly reduce the amount of abuse to vulnerable individuals and increase their independency. There are many problems as stated above that contribute to this issue, but by passing this bill to an act, it is a step in the right direction to reviving our foundation of treating the people around us with respect. I thank you for this opportunity to testify.

**Re: Hawaii House Bill 199**

Contact Information:

Email: [Gerald@CapitalElectric808.com](mailto:Gerald@CapitalElectric808.com)

Phone: (808)489-3179

**GERALD YUH TESTIMONY**

Elder abuse, and more specifically, elder financial abuse is the single largest threat to the financial, emotional and physical well-being of our elderly population.

The effects of elder abuse cannot be overstated. It can wipe out the entire life savings of an unknowing senior citizen, depriving him/her of basic healthcare, medicines, not to mention his/her ultimate safety, sense of security and peace, and above all—his/her honor and dignity.

Our aging grandparents, parents and other loved ones are amidst a “perfect storm” created by a confluence of factors. The chief factor is that there is more money passing hands between the generations than ever before. America's “Greatest Generation” that fought World War II (those born between 1901 and 1928) together with the oldest of our “Baby Boomer” population (those born between 1945 and 1965) have already started to transfer to the younger baby boomers and their children an estimated \$40 trillion in aggregate lifetime savings.

Many of these individuals will be passing on relatively modest savings however, these savings might include the equity in their home, life insurance, retirement benefits, stock brokerage accounts and other assets. It is simply a matter of fact that our aging population is most at risk and it is also simply not accurate to suggest that financial elder abuse strikes only our most wealthy families and elderly citizens.

And it is unfortunate to note that succeeding generations, including so called “Generations X and Y” and now the “Millennials,” have not fared as well economically as our “Baby Boomers” and older generations. Unemployment, corporate downsizing, the economic downturn through a series of savings and loans crises and the national mortgage meltdown crisis, have wreaked havoc on today’s middle-aged children’s individual savings. People in Hawaii now are forced to live three, sometimes four, generations in a single family home to make ends meet. Unfortunately, in some families there is the motive and the opportunity

for individuals who are living beyond their means to take advantage of aging grandparents and parents.

Many of these individuals that become victims, need their lifetime savings to provide, among other things, either homecare or independent senior living in their “Golden Years.”

For many of the people that have not been able to save or have not saved, it will be taxpayer-subsidized and government-sponsored programs that will be forced to pick up the tab. Even despite the best intentions, the most disciplined of savers will be finding themselves outliving their savings in their senior years.

People are living longer. Nationally, life expectancies have increased in the last 110 years from 47 years to almost 77 years for men, and to almost 80 years old for females. In Hawaii, life expectancies are even higher than the national average. People are simply living longer and their living needs are greater, and thus, are more vulnerable to financial abuse over a longer period of time than ever before.

With elderly financial abuse being rampant, the effects of financial abuse affect us all not just the elderly or their direct families. As the elderly are victimized and their savings are robbed, more and more will be dependent upon government services at the taxpayer expense.

It has been recently estimated by a Virginia Tech study sponsored by MetLife Mature Market Institute in 2011 that the financial loss from elderly abuse was estimated at \$2.9 billion annually. It is important to note that that was a 12 percent increase from the last time the study was completed in 2008. It is expected that this number is greatly under-reported as vulnerable adults are unaware of the financial exploitation committed against them. Although there is no national database to support financial elder abuse, studies that involved tracking articles on financial elder abuse across the country report that over one-third of financial elder abuse was committed by family, friends and neighbors who knew the victim intimately.

In Hawaii, in such a close knit community, one would be hard pressed to find an individual who has not had a family member directly involved in an elder abuse incident, or knew a close friend or other individual whose family was directly affected. Anecdotally, in Hawaii much of the elder abuse is committed by children living in the same household as a parent while living close by who are

financially struggling, sending their own kids to secondary school, trying to pay their own mortgage, save for college and are under tremendous financial pressure. Often due to Hawaii's unique geography, families can be isolated, siblings can be living on the mainland and either take a parent to the mainland and isolate them, or conversely, have a local sibling here isolate mainland siblings from participation in the aging parent's life. More importantly elderly financial abuse goes hand in hand with other type of extreme abuses committed upon the elderly through deceit, threats and emotional manipulation of the elderly. Isolated elderly individuals are often brainwashed into developing a siege mentality; the world against an elderly individual who may have diminished cognitive ability, who can only be "saved" by that manipulative relative, child or caregiver.

The difficulty of finding relief is often caused by the fact that there no direct legal recourse currently available to help an elderly individual, and particularly if that elderly individual does not meet the threshold test for the imposition of a conservatorship because they may arguably be able to handle their own financial affairs, yet still be cognitively impaired and vulnerable. As stated herein, this leaves the particular individual susceptible to threats, exploitation that may be at first glance difficult to prove.

The typical victim of financial elder abuse is female and generally in their late 70's and 80's, and typically shows signs of dementia. These findings are consistent with studies on dementia and Alzheimer's, which is an age-linked disease. Individuals on a national basis that are 80 years of age or older, have at least a 50 percent chance of contracting dementia and dying of that disease. We now know from studies that from the onset of dementia to death, 40 percent of that time will be spent in the latter stages of dementia where that patient is extremely vulnerable to financial exploitation.

We also know that almost one-third of our elderly citizens between the ages of 74 and 84 will die of a dementia related illness. Once dementia is contracted it is irreversible and the individuals lead to a gradual decline. Even in the early stages of dementia, an individual can be vulnerable to exploitation committed by a known relative.

Our elderly are vulnerable because of the abundance of their hard-earned savings; because they are living longer; because they are more susceptible to age-related diseases; and because, unfortunately, the current generation, often times has

the motive and opportunity to take advantage of them. In many cases, this includes direct family members who have significant contact with their victim.

In the State of Hawaii, for reasons that are not entirely clear, the protection of our senior citizens against financial abuse and elder abuse has been left largely to the government institutions such as Hawaii's Adult Protective Services.<sup>1</sup>

The unfortunate state of the law in Hawaii is that there is virtually no direct private cause of action in which an individual can go to court on to initiate their own court proceedings to prevent financial elder abuse or physical abuse against their loved ones.

Since elder abuse is often committed by the individuals closest to the individual, those individuals often already hold a power of attorney or a conservatorship over the incapacitated adult. This makes it extremely difficult, and in many cases, financially impossible to easily go to court and challenge a conservatorship or institute a conservatorship in the probate courts. these types of proceedings generally degenerate into whom is best able to serve, rather than having someone step in immediately and to preserve the assets and testamentary intentions of an incapacitated elderly adult. As stated before, many adults who are vulnerable may still not meet the specific cognitive criteria to have a conservatorship instituted, yet these elders may be ongoing victims, and their assets may be depleted. The fact finding process with doctors and other conflicting experts' opinions can take months or even years to adjudicate and in the meantime the financial abuse is ongoing.

It is indeed curious that individuals and private groups in Hawaii have the right to seek to accomplish many things—including the statutory right to shoreline access, the right to institute class actions against companies for unfair and deceptive trade practices, the right to sue privately on behalf of a corporation to protect shareholders whom they have never met or even known—and yet, one

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<sup>1</sup> Hawaii Revised Statutes, Section 346-231(a) provides (emphasis added):

If the department believes that a person is a vulnerable adult and it appears probably that the vulnerable adult has incurred abuse or is in danger of abuse of immediate action is not taken and the vulnerable adult consents, or if the vulnerable adult does not consent and there is probable cause to believe that the vulnerable adult lacks the capacity to make decisions concerning the vulnerable adult's person, the department shall seek an order for immediate protection in accordance with this section.

cannot file a single private right of action against a relative for elder abuse or financial elder abuse in the courts.

It is also curious that family courts entertain child custody cases that may go on for years with thousands of dollars spent on psychologists, social workers, tying up the courts all during this time but there is not avenue for an individual to go to court and simply ask for simple visitation to see their grandmother or parent. Isolation and prevention of visitation by a family member or other caregiver, is commonly a precursor to elder financial abuse, and often goes simultaneously with the emotional manipulation of an elderly individual that bestows upon them fear, anxiety and other crippling emotions. The effects upon the elderly become even more exaggerated as they go through diminished capacity in the early, moderate or end stages of Alzheimer's or when their physical health begins to break down and they are heavily dependent for their care and well-being in connection with the outside world through this manipulating individual.

In the case of fraudulent procurement of wills and trusts, improper use of joint bank accounts, stock brokerage accounts, fraudulent manipulation of retirement benefits, annuities, even deeds to homes or reverse mortgages to tap equity, the conversion of assets often starts with patterns of isolation against the elderly.

Moreover, the fraudulent procurement of wills, trusts and powers of attorney which a perpetrator employs to either receive lifetime gifts or beneficiary in will or a trust usually starts from this pattern of isolation. Unfortunately, there is no law that currently and specifically addresses the right of a family member to bring a case to court when it is suspected that individuals committing elder abuse and has wrongly changed a parent's estate plan or other property designations that would take effect when the individual dies.

What have other states done? The State of Nevada has put in a private right of action for individuals to negate or nullify an estate plan that is put in place by a perpetrator of undue influence while the incapacitated adult is still alive.<sup>2</sup>

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<sup>2</sup> Nev. Rev. Stat. Ann. § 164.015 (West) provides in relevant part as follows:

*1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust, including a revocable living trust while the settlor is still living if the court determines that the settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence. Proceedings which may be maintained under this section are those*



Likewise, California has put in a private right of action for filing elder abuse<sup>3</sup> cases against adults by someone who has a power of attorney and/or someone who is named a conservator or trustee.<sup>4</sup> Case law in California has also included beneficiaries of a revocable trust also as individuals that have the right to file financial abuse claims during or after the life of an incapacitated adult.

Hawaii should put in place the extended version of California's elder abuse law to allow all children of a parent to file a case of elder financial abuse or elder abuse against an individual who commits such against a parent. Currently under Hawaii law, some trial judges without statutory guidelines have taken the position that an individual may have to wait 10, 20 years or more until an aging parent passes away before that individual is allowed to file a lawsuit for undue influence or fraud in the procurement of a will or trust. After the passage of 20 years,

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*concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts . . .*

<sup>3</sup> Cal. Welf. & Inst. Code § 15610.30 (West) defines “financial abuse” of an elder as follows:

- (a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:*
- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.*
  - (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.*
  - (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.*

Likewise, Cal. Welf. & Inst. Code § 15610.43 (West) defines “isolation” as it relates to elder abuse, as follows:

- (a) “Isolation” means any of the following:*
- (1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.*
  - (2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.*

<sup>4</sup> Cal. Welf. & Inst. Code § 15600(j) (West) provides in relevant part as follows:

*It is the further intent of the Legislature in adding Article 8.5 to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.*

witnesses die or move away, medical records and financial records get lost, memories fade making it prohibitively expensive, if not impossible, to prove out cases of embezzlement and/or undue influence or fraud in connection with an estate plan.

While some may say that such legislation permitting an action against fraudulent estate planning documents and powers of attorneys while the individual is still alive will open up a Pandora's Box and open a flood gate of lawsuits, one must be reminded of the sheer magnitude of what is going on today. Individual perpetrators know that it is difficult if not impossible without statutory empowerment to go into court to prosecute these claims while the tracks are fresh. Because of that they are embolden and it occurs with such frequency, and in such sheer volume that it is impossible to overstate.

The fact that the valid cause of action may be increased by this proposed legislation by matters brought before the court is not an excuse to do so. The only mechanism to really prevent this from occurring is to have a private right of action so perpetrators will think twice about committing financial fraud against an elderly citizen knowing there's immediate right for a loved one to have direct access to the courts to stop, prevent and hopefully recover the ill-gotten gains and return them to the aging parent. It simply takes far more money to bring these claims after death and ties up the courts for longer amounts than if cases were brought in a more timely fashion—while an aging party is alive.

Lastly, it must be said that this testimony is in no way a criticism of Adult Protective Services. This is an observation that our laws should not prevent and in fact should expressly allow, family members to take initiative to protect their own loved ones and their attended financial wellbeing. Under the current regime, to require a family member to first report to Adult Protective Services and be solely dependent upon Adult Protective Services to have the resources, training and skills to evaluate these cases much less than have government staff attorneys to then civilly evaluate the cases and then, if possible, prosecute these cases is just not realistic. It is another huge burden to the taxpayer and an ineffective solution much less than a stripping of the rights of individuals to protect their own family members, their future inheritances.

## House Bill 199

### Attachments

#### Gerald Yuh Testimony

Please find attached the following documents for your review:

1. Nev. Rev. Stat. Ann. § 164.015
2. Cal. Welf. & Inst. Code § 15610.30
3. Cal. Welf. & Inst. Code § 15610.43
4. Cal. Welf. & Inst. Code § 15600

West's Nevada **Revised Statutes** Annotated

Title 13. Guardianships; Conservatorships; Trusts (Chapters 158-167)

Chapter 164. Administration of Trusts (Refs & Annos)

General Provisions

**N.R.S. 164.015**

**164.015.** Petition concerning internal affairs of nontestamentary trust;  
jurisdiction of court; procedure for contests of certain trusts; final order; appeal

Effective: October 1, 2015

[Currentness](#)

1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust, including a revocable living trust while the settlor is still living if the court determines that the settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts, including petitions with respect to a nontestamentary trust for any appropriate relief provided with respect to a testamentary trust in [NRS 153.031](#) and petitions for a ruling that property not formally titled in the name of a trust or its trustee constitutes trust property pursuant to [NRS 163.002](#).
2. A petition under this section or subsection 2 of [NRS 30.040](#) that relates to a trust may be filed in conjunction with a petition under [NRS 164.010](#) or at any time after the court has assumed jurisdiction under that section.
3. If an interested person contests the validity of a revocable nontestamentary trust, the interested person is the plaintiff and the trustee is the defendant. The written grounds for contesting the validity of the trust constitutes a pleading and must conform with any rules applicable to pleadings in a civil action. This subsection applies whether the person contesting the validity of the trust is the petitioner or the objector and whether or not the opposition to the validity of the trust is asserted under this section or subsection 2 of [NRS 30.040](#).
4. In a proceeding pursuant to subsection 3, the competency of the settlor to make the trust, the freedom of the settlor from duress, menace, fraud or undue influence at the time of execution of the will, the execution and attestation of the trust instrument, or any other question affecting the validity of the trust is a question of fact and must be tried by the court, subject to the provisions of subsection 5.
5. A court may consolidate the cases if there is a contest of a revocable nontestamentary trust and a contest relating to a will executed on the same date. If a jury is demanded pursuant to [NRS 137.020](#) for the contest of the will, the court may instruct the jury to render an advisory opinion with respect to an issue of fact pursuant to subsection 4 in the contest of the trust.
6. Upon the hearing, the court shall enter such order as it deems appropriate. The order is final and conclusive as to all matters determined and is binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme

Court pursuant to [Section 4 of Article 6 of the Nevada Constitution](#) may be taken from the order within 30 days after notice of its entry by filing notice of appeal with the clerk of the district court. The appellant shall mail a copy of the notice to each person who has appeared of record. If the proceeding was brought pursuant to subsection 3, 4 or 5, the court must also award costs pursuant to chapter 18 of [NRS](#).

7. Except as otherwise ordered by the court, a proceeding under this section does not result in continuing supervisory proceedings, and the administration of the trust must proceed expeditiously in a manner consistent with the terms of the trust, without judicial intervention or the order, approval or other action of any court, unless the jurisdiction of the court is invoked by an interested person or exercised as provided by other law.

8. As used in this section, “nontestamentary trust” has the meaning ascribed to it in [NRS 163.0016](#).

#### Credits

Added by [Laws 1999, c. 467, § 512](#). Amended by [Laws 2009, c. 215, § 51](#); [Laws 2013, c. 343, § 104](#), eff. Jan. 1, 2015; [Laws 2015, c. 524, § 64](#), eff. Oct. 1, 2015.

#### Editors' Notes

### HISTORICAL AND STATUTORY NOTES

#### 2009 Legislation

Technical corrections were made to conform with Legislative Counsel Bureau [revisions](#) (2009).

“1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts, including petitions with respect to a nontestamentary trust for any appropriate relief provided with respect to a testamentary trust in [NRS 153.031](#).

“2. A petition under this section may be filed in conjunction with a petition under [NRS 164.010](#) or at any time after the court has assumed jurisdiction under that section.

#### 2015 Legislation

Technical corrections were made to conform with Legislative Counsel Bureau [revisions](#) (2015).

[Laws 2015, c. 524, § 64](#), amended this section by inserting “and petitions for a ruling that property not formally titled in the name of a trust or its trustee constitutes trust property pursuant to [NRS 163.002](#)” in Subsec. 1; inserting “or subsection 2 of [NRS 30.040](#) that relates to a trust” in Subsec. 2; adding the third sentence, beginning “This subsection applies ...” in Subsec. 3; rewriting Subsec. 7; and adding Subsec. 8. Prior to being rewritten, Subsec. 7 read as follows:

### CROSS REFERENCES

Ability of settlor or beneficiary to modify or terminate trust, state taxes, see [NRS 163.556](#).

Breach of trust by trustee, petition in civil action, see [NRS 163.115](#).

Powers of cotrustees exercisable by majority if more than two cotrustees, see [NRS 163.110](#).

Notes of Decisions containing your search terms (0)

[View all 3](#)

**N. R. S. 164.015**, NV ST **164.015**

Current through the end of the 78th Regular Session (2015) and 30th Special Session (2016) of the Nevada Legislature and all technical corrections received by the Legislative Counsel Bureau.

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**West's Annotated California Codes**

Welfare and Institutions Code (Refs & Annos)

Division 9. Public Social Services (Refs & Annos)

Part 3. Aid and Medical Assistance (Refs & Annos)

Chapter 11. Elder Abuse and Dependent Adult Civil Protection Act (Refs & Annos)

Article 2. Definitions (Refs & Annos)

**West's Ann.Cal.Welf. & Inst.Code § 15610.30**

**§ 15610.30. Financial abuse**

Effective: January 1, 2014

[Currentness](#)

(a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in [Section](#) 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this [section](#), a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this [section](#), “representative” means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

### Credits

(Added by Stats.1994, c. 594 (S.B.1681), § 3. Amended by Stats.1997, c. 724 (A.B.1172), § 37; Stats.1998, c. 946 (S.B.2199), § 5; Stats.2000, c. 813 (S.B.1742), § 2; Stats.2000, c. 442 (A.B.2107), § 5; Stats.2008, c. 475 (S.B.1140), § 1; Stats.2013, c. 668 (A.B.140), § 2.)

### Editors' Notes

#### HISTORICAL AND STATUTORY NOTES

Stats.1998, c. 946 (S.B.2199), legislative findings and declarations, and regulations implementing, see Historical and Statutory Notes under [Welfare and Institutions Code § 15610.07](#).

Stats.2000, c. 442 (A.B.2107), rewrote this [section](#), which read:

“(b) For the purpose of this [section](#), the term “third party” means a person who holds or has control of property that belongs to or is held in express trust, constructive trust or resulting trust for an elder or dependent adult.

“(c) For the purposes of this [section](#), the term “representative” means an elder or dependent adult's conservator of the estate, or attorney-in-fact acting within the authority of the power of attorney.”

[Section](#) 3 of Stats.2000 c. 813 (S.B.1742), provides:

“**SEC.** 3. If both this bill and AB 2107 [Stats.2000, c. 442] are enacted and both bills amend [Section 15610.30](#) of the Welfare and Institutions Code, the amendment to [Section 15610.30](#) made by AB 2107 shall prevail over the amendment to that [section](#) made by this act, whether AB 2107 is enacted prior to, or subsequent to, the enactment of this act.”

[Section](#) affected by two or more acts at the same session of the Legislature, see [Government Code § 9605](#).

Severability of provisions of Stats.2000, c. 813 (S.B.1742), see Historical and Statutory Notes under [Probate Code § 2950](#).

Stats.2008, c. 475 (S.B.1140), rewrote this [section](#), which read:

“(2) For purposes of this [section](#), a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).

“(c) For purposes of this [section](#), ‘representative’ means a person or entity that is either of the following:

[Section](#) 5 of Stats.2008, c. 475 (S.B.1140), provides:

“**SEC.** 5. No reimbursement is required by this act pursuant to [Section 6 of Article XIII B of the California Constitution](#) because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of [Section 17556 of the Government Code](#), or changes the definition of a crime within the meaning of [Section 6 of Article XIII B of the California Constitution](#).”

#### 2013 Legislation



Stats.2013, c. 668 (A.B.140), in subd. (a)(3), substituted “[Section 15610.70](#)” for “[Section 1575 of the Civil Code](#)”.

For cost reimbursement provisions relating to [Stats.2013, c. 668 \(A.B.140\)](#), see Historical and Statutory Notes under [Probate Code § 86](#).

For letter of intent regarding [Stats.2013, c. 668 \(A.B.140\)](#), see Historical and Statutory Notes under [Probate Code § 86](#).

### Derivation

Former [§ 15610](#), added by Stats.1985, c. 1120, [§ 7](#); Stats.1985, c. 1164, [§ 3](#), amended by Stats.1986, c. 769, [§ 6](#); [Stats.1987, c. 1396, § 1](#); [Stats.1990, c. 435, § 1](#); [Stats.1991, c. 197, § 1](#).

### CROSS REFERENCES

Adult protective services system, see [Welfare and Institutions Code § 15750 et seq.](#)

Attorney-in-fact breach of duty, additional remedies for bad faith, see [Probate Code § 4231.5](#).

Civil actions for abuse of elderly or dependent adults, liability for financial abuse, attorneys's fees and costs, limits on damages, and punitive damages awarded, see [Welfare and Institutions Code § 15657.5](#).

Dependent adult defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.23](#).

Effect of homicide, predeceasing a decedent, see [Probate Code § 259](#).

Elder defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.27](#).

Financial abuse of mentally impaired elders, public guardian, definitions, see [Probate Code § 2951](#).

Writ of attachment, action for damages for financial abuse of the elderly and dependent adults, see [Welfare and Institutions Code § 15657.01](#).

Wrongful taking, concealment or disposition of property through the commission of elder or dependent adult financial abuse, liability, remedies, see [Probate Code § 859](#).

### LAW REVIEW AND JOURNAL COMMENTARIES

Marrying into financial abuse: A solution to protect the elderly in [California](#). Ashley E. Rathbun, 47 San Diego L. Rev. 227 (2010).

Putting the cart before the horse: The need to re-examine damage caps in [California's](#) Elder Abuse Act. Martin Ramey, 39 San Diego L. Rev. 599 (2002).

Review of Selected 2007 [California](#) Legislation (Chapter 202: [California](#) provides further protection for seniors contemplating reverse mortgage loans). Leslie R. Ramos, 38 McGeorge L. Rev. 45 (2007).

### RESEARCH REFERENCES

#### Encyclopedias

[Cal. Jur. 3d Criminal Law: Crimes Against Property § 384](#), Defrauding Elder or Dependent Adult.

[Cal. Jur. 3d Criminal Law: Post-Trial Proceedings § 405](#), Offenses Against Particularly Vulnerable Victim; Elder or Dependent Adult.

[Cal. Jur. 3d Decedents' Estates § 8](#), Effect Of Abuse Of Elder or Dependent Adult; Undue Influence.

[Cal. Jur. 3d Decedents' Estates § 937](#), Compulsory Accounting by Persons to Whom Assets Were Entrusted.

[Cal. Jur. 3d Lis Pendens § 3](#), Property to Which Lis Pendens Applicable.

[Cal. Jur. 3d Wills § 321](#), Manner Of Omitting Spouse.

[Cal. Civ. Prac. Real Property Litigation § 4:96](#), Notice Of Default.

[California Civil Practice Torts § 41:5](#), Damages.

## Other References

[ANN.2006 ATLA - Convention Reference Material 577](#), Long-Term Care Insurance: It's Back to the Wild Wild [West](#) Of Bad Faith Litigation.

## Treatises and Practice Aids

[California](#) Community Property Law § 13:70, Elder Abuse.

[California](#) Jury Instructions-Civil, 8th Edition 3100, Financial Abuse--Essential Factual Elements.

[California](#) Jury Instructions-Civil, 8th Edition 7.43, Financial Abuse--Defined.

Rutter, [Cal.](#) Practice Guide: Civil Trials & Evidence Ch. 17-E, Attorney Fees as Costs.

Rutter, [Cal.](#) Practice Guide: Civil Trials & Evidence Ch. 8G-D, Burdens and Standards Of Proof.

Rutter, [Cal.](#) Practice Guide: Enforcing Judgments/Debts Ch. 4-A, Attachment.

Rutter, [Cal.](#) Practice Guide: Probate Ch. 1-B, Premortem Planning.

Rutter, [Cal.](#) Practice Guide: Probate Ch. 14-I, Effect Of Homicide or Abuse Of Elder/Dependent Adult on Property Rights.

Rutter, [Cal.](#) Practice Guide: Probate Ch. 15-C, Elder and Dependent Adult Abuse Claims ([Welf.](#) & Inst.C. S15600 et seq.).

Rutter, [Cal.](#) Practice Guide: Probate Ch. 15-D, Adjudicating Adverse Claims to Property (Prob.C. S850).

Judicial Council of [Calif.](#) Civil Jury Instr. 3100, Financial Abuse--Essential Factual Elements ([Welf.](#) & Inst. Code, S15610.30).

Judicial Council of [Calif.](#) Civil Jury Instr. 3101, Financial Abuse--Decedent's Pain and Suffering ([Welf.](#) & Inst. Code, S15657.5).

Judicial Council of [Calif.](#) Civil Jury Instr. 3117, Financial Abuse--“Undue Influence” Explained.

Judicial Council of [Calif.](#) Civil Jury Instr. VF-3100, Financial Abuse--Individual or Individual and Employer Defendants ([Welf.](#) & Inst. Code, §§ [15610.30](#), 15657.5(B)).

Judicial Council of [Calif.](#) Civil Jury Instr. VF-3101, Financial Abuse--Employer Defendant Only ([Welf.](#) & Inst. Code, §§ [15610.30](#), 15657.5(B)).

Miller and Starr [California](#) Real Estate § 3:39, Duty Of Care to Elder, Dependent, or Vulnerable Principal.

Will Contests § 8:25, Alternatives to Will Contests.

5 Witkin, [California](#) Summary 10th Torts § 147, ([S 147](#)) in General.

5 Witkin, [California](#) Summary 10th Torts § 149, ([S 149](#)) Confidentiality and Disclosure.

5 Witkin, [California](#) Summary 10th Torts § 148A, ([S 148A](#)) (New)-Reporting by Financial Institutions.


6 Witkin, [California](#) Summary 10th Torts § 1686, Statutory Remedies.

6 Witkin, [California](#) Summary 10th Torts § 1688, Forms and Instructions.

14 Witkin, [California](#) Summary 10th Wills and Probate § 302, Effect Of Elder or Dependent Adult Abuse.

## NOTES OF DECISIONS

### Refinance terms

Mortgage broker's solicitation of refinance from seventy-nine year old mortgagor without disclosing actual terms of loans and by instructing mortgagor to sign loan documents without actually reading them constituted “financial abuse” of elder or dependent adult under [California](#) Elder Abuse Act; broker's fees were wrongfully obtained as result of false statements about terms of refinance, which it knew were less favorable to mortgagor than previous mortgage. [Zimmer v. Nawabi](#), E.D.Cal.2008, 566 F.Supp.2d 1025. [Brokers](#)  34

### Property

Lender did not owe duty to spouse of borrower to disclose consequences of being removed from title to real property prior to execution of reverse mortgage loan, and thus lender did not act wrongfully or with intent to defraud, as required to have viable financial elder abuse claim under **California** law, when it closed on loan. [Welte v. Wells Fargo Bank National Association](#), C.D.Cal.2016, 2016 WL 3693797. [Mortgages](#) 🔑 211; [Protection of Endangered Persons](#) 🔑 7

Counter-claimants' allegations that retail trademarks became their property pursuant to an alleged agreement with plaintiffs, and that plaintiffs failed to transfer such marks to counter-claimants, failed to state a claim for financial elder abuse under **California** law, absent allegation that the property of an elder was wrongfully retained. [Sonoma Foods, Inc. v. Sonoma Cheese Factory, LLC](#), N.D.Cal.2007, 634 F.Supp.2d 1009. [Protection Of Endangered Persons](#) 🔑 10

### Nonjudicial foreclosure

Under **California** law, beneficiary of deed of trust was entitled to protection of qualified privilege from liability under Elder Abuse and Dependent Adult Civil Protection Act in connection with its attempt to take real property away from protected individual through nonjudicial foreclosure process, so long as its conduct was not malicious. [Consumer Solutions REO, LLC v. Hillery](#), N.D.Cal.2009, 658 F.Supp.2d 1002. [Protection of Endangered Persons](#) 🔑 7

### Pleadings

Allegation that insurer engaged in practice of using deceptive practices to deplete accumulated cash value of senior citizens' existing life insurance policies or annuities to finance purchase of its deferred annuities that would not mature until after their actuarial life expectancy was sufficient to state claim for violation of **California's** Financial Elder Abuse Laws, despite insurer's contention that seniors engaged in arms' length commercial transactions and could have demanded return of funds at any time. [Negrete v. Fidelity and Guar. Life Ins. Co.](#), C.D.Cal.2006, 444 F.Supp.2d 998. [Antitrust And Trade Regulation](#) 🔑 221

Even if executor of deceased lender's probate estate could have proven that Chapter 7 debtor exercised undue influence to get lender's money or that debtor acquired the loan for a wrongful use, in violation of the **California** Welfare and Institutions Code, he still would have failed to show that, at the time of entering into the loan agreement, debtor "willfully and maliciously" intended to injure lender, as required for nondischargeability; the discharge exception for debts for willful and malicious injury requires a higher mental state than the **California** statute, which merely requires a showing that property was taken from an elder for a "wrongful use" or by "undue influence." [In re Mbunda](#), C.A.9, 2015, 604 Fed.Appx. 552, 2015 WL 1619469, certiorari denied 136 S.Ct. 198, 193 L.Ed.2d 128. [Bankruptcy](#) 🔑 3374(9)

### Summary judgment

Genuine disputes of material fact existed as to whether a founder of an entity that conducted real estate investment seminars made misrepresentations to an elderly person over the age of 65, and that the founder knew or should have known his misrepresentations were likely to harm elders, precluding summary judgment on class claim for financial elder abuse against founder under **California** law. [Makaeff v. Trump University, LLC](#), S.D.Cal.2015, 145 F.Supp.3d 962. [Federal Civil Procedure](#) 🔑 2500

### Sufficiency of evidence

Taking from spouse of borrower did not occur, as required for financial elder abuse claim under **California** law, by deducting loan commission and fees from reverse mortgage loan proceeds at closing that were due to lender, since spouse of borrower previously had quitclaimed real property to borrower and thus did not have ownership of equity in home.

[Welte v. Wells Fargo Bank National Association, C.D.Cal.2016, 2016 WL 3693797. Protection of Endangered Persons](#) 🔑 7

Taking from spouse of borrower did not occur, as required for financial elder abuse claim under **California** law, by lender recording notice of default on real property after borrower died who had borrowed money under reverse mortgage; lender commenced foreclosure proceedings because loan became due and payable upon borrower's death under terms of reverse mortgage. [Welte v. Wells Fargo Bank National Association, C.D.Cal.2016, 2016 WL 3693797. Protection of Endangered Persons](#) 🔑 7

Under **California** law, employer's alleged breach of promise to provide employee with sufficient hours to permit him to maintain full-time status, and thereby maintain his insurance benefits, did not amount to “financial abuse” under Elder Abuse Dependent Adult Civil Protection Act, where employee was paid for all hours he worked, and claimed only that breach resulted in lost future wages. [Hardin v. Wal-Mart Stores, Inc., E.D.Cal.2011, 813 F.Supp.2d 1167](#), affirmed in part [604 Fed.Appx. 545, 2015 WL 1222412](#), certiorari denied [136 S.Ct. 331, 193 L.Ed.2d 230](#). [Labor and Employment](#) 🔑 105; [Protection of Endangered Persons](#) 🔑 7

**West's Ann. Cal. Welf. & Inst. Code § 15610.30, CA WEL & INST § 15610.30**

Current with all 2016 Reg.Sess. laws, Ch. 8 of 2015-2016 2nd Ex.Sess., and all propositions on 2016 ballot.

West's Annotated California Codes

Welfare and Institutions Code (Refs & Annos)

Division 9. Public Social Services (Refs & Annos)

Part 3. Aid and Medical Assistance (Refs & Annos)

Chapter 11. Elder Abuse and Dependent Adult Civil Protection Act (Refs & Annos)

Article 2. Definitions (Refs & Annos)

West's Ann.Cal.Welf. & Inst.Code § 15610.43

§ 15610.43. Isolation

Currentness

(a) "Isolation" means any of the following:

(1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.

(2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

(3) False imprisonment, as defined in [Section 236 of the Penal Code](#).

(4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

**Credits**

(Added by [Stats.1994, c. 594 \(S.B.1681\)](#), § 3.)

West's Ann. Cal. Welf. & Inst. Code § 15610.43, CA WEL & INST § 15610.43

Current with all 2016 Reg.Sess. laws, Ch. 8 of 2015-2016 2nd Ex.Sess., and all propositions on 2016 ballot.

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**West's Annotated California Codes**

Welfare and Institutions Code (Refs & Annos)

Division 9. Public Social Services (Refs & Annos)

Part 3. Aid and Medical Assistance (Refs & Annos)

Chapter 11. Elder Abuse and Dependent Adult Civil Protection Act (Refs & Annos)

Article 1. Legislative Findings and Intent (Refs & Annos)

**West's Ann.Cal.Welf. & Inst.Code § 15600**

**§ 15600.** Elders and dependent adults subjected to abuse, neglect or abandonment; legislative declarations and intent

**Currentness**

(a) The Legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons.

(b) The Legislature further recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

(c) The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

(d) The Legislature recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position.

(e) The Legislature further recognizes that factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol.

(f) The Legislature declares that this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this **section**.

(g) The Legislature further declares that uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county.

(h) The Legislature further finds and declares that infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.

(i) Therefore, it is the intent of the Legislature in enacting this chapter to provide that adult protective services agencies, local long-term care ombudsman programs, and local law enforcement agencies shall receive referrals or complaints from public or private agencies, from any mandated reporter submitting reports pursuant to [Section 15630](#), or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered, and shall take any actions considered necessary to protect the elder or dependent adult and correct the situation and ensure the individual's safety.

(j) It is the further intent of the Legislature in adding Article 8.5 (commencing with [Section 15657](#)) to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.

#### Credits

(Added by Stats.1982, c. 1184, p. 4223, § 3. Amended by Stats.1985, c. 1120, § 4; Stats.1985, c. 1164, § 1, eff. Sept. 28, 1985; Stats.1986, c. 769, § 3, eff. Sept. 15, 1986; Stats.1991, c. 774 (S.B.679), § 2; Stats.1994, c. 594 (S.B.1681), § 1.)

#### Editors' Notes

### HISTORICAL AND STATUTORY NOTES

Effect of amendment of [section](#) by two or more acts at the same session of the legislature, see [Government Code § 9605](#).

### CROSS REFERENCES

Abandonment defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.05](#).

Adult Day Health Medi-Cal Law, adult day health care programs, see [Welfare and Institutions Code § 14520 et seq.](#)

Adult protective services agency defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.13](#).

Adult protective services defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.10](#).

Adult protective services system, see [Welfare and Institutions Code § 15750 et seq.](#)

Dependent adult defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.23](#).

Elder defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.27](#).

Legislative intention, statutory construction, see [Code of Civil Procedure § 1859](#).

Local law enforcement agency defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.45](#).

Long-term care ombudsman defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.50](#).

Neglect defined for purposes of this Chapter, see [Welfare and Institutions Code § 15610.57](#).

Refusal of services to Medi-Cal recipients prohibited, see [Health and Safety Code § 1586](#).

Services defined for purposes of this Division, see [Welfare and Institutions Code § 10053](#).

Statutory construction,

General rules for statutes, see [Government Code § 9603](#).

Legislative intent, see [Code of Civil Procedure § 1859](#).

Two permissible interpretations, construction in favor of natural right, see [Code of Civil Procedure § 1866](#).

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Review of Selected 2007 [California](#) Legislation (Chapter 202: [California](#) provides further protection for seniors contemplating reverse mortgage loans). Leslie R. Ramos, 38 [McGeorge L. Rev.](#) 45 (2007).

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[Cal. Jur. 3d Discovery and Depositions § 78](#), Prohibiting or Limiting Scope Of Discovery--Discovery in Elder Abuse Cases.

[Cal. Jur. 3d Wrongful Death § 105](#), Damage to or Suffering Of Decedent--Elder Abuse and Dependent Adult Civil Protection Act.

[California Civil Practice Torts § 9:5](#), Instituting or Continuing Action When Plaintiff Dies.

[California Civil Practice Torts § 7:19](#), Actions Against Health Care Provider.

[California Civil Practice Torts § 7:20](#), Actions Against Religious Corporation.

[California Civil Practice Torts § 32:67](#), Tolling Effect Of Code Civ. Proc. S364 on Statute Of Limitations.

#### Other References

Labor & Employment Law ¶ 161977, Steven Martinez, Plaintiff, V. State Of [California](#), et al., Defendants.

Labor & Employment Law ¶ 160339, Steven Martinez, Plaintiff, V. State Of [California](#), Defendant.

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[California Affirmative Defenses 2d § 43:5](#), Persons Affected by Settlement.

[California Community Property Law § 13:70](#), Elder Abuse.

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[California Medical Malpractice Law and Practice § 3:5](#), Inherent Biological Factors--Time.

[California Medical Malpractice Law and Practice § 10:8](#), Punitive Damages.

[California Medical Malpractice Law and Practice § 10:9](#), Consent and Privilege.

[California Medical Malpractice Law and Practice § 11:2](#), [California](#) State Complaints.

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**California** Medical Malpractice Law and Practice § 16:18, Bodily Injuries--Health Care Expenses Before Trial.

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6 Witkin, **California** Procedure 5th Provisional Remedies § 315A, (S 315A) (New)-Abuse Of Elder or Dependent Adult.

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5 Witkin, **California** Summary 10th Torts § 230, (S 230) No Punitive Damages.

6 Witkin, **California** Summary 10th Torts § 1601, (S 1601) Arising Out Of Professional Negligence.

14 Witkin, **California** Summary 10th Wills and Probate § 962, Court Supervision.

14 Witkin, **California** Summary 10th Wills and Probate § 979, Jurisdiction.

## NOTES OF DECISIONS

### Purpose

The purpose of the Elder Abuse Act is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect. [Benun v. Superior Court \(App. 2 Dist. 2004\) 20 Cal.Rptr.3d 26, 123 Cal.App.4th 113](#), review denied; [In re Estate of Lowrie \(App. 2 Dist. 2004\) 12 Cal.Rptr.3d 828, 118 Cal.App.4th 220](#); [Delaney v. Baker \(1999\) 82 Cal.Rptr.2d 610, 20 Cal.4th 23, 971 P.2d 986](#).

Fact that Legislature intended the Elder Abuse Act to sanction only egregious acts of misconduct distinct from professional negligence contravenes any suggestion that, in defining elder abuse to include failure to provide medical care, the Legislature intended that health care providers, alone among elder custodians, would enjoy under the Act the procedural protections they enjoy when sued for negligence in their professional health care practice. [Covenant Care, Inc. v. Superior Court \(2004\) 11 Cal.Rptr.3d 222, 32 Cal.4th 771, 86 P.3d 290](#). [Health ☞ 662](#); [Negligence ☞ 281](#)

### Limitation of actions

Statute tolling limitations period for action based on health care provider's "professional negligence" for 90 days after notice of claim was served on provider did not apply to widow's action against skilled nursing facility, seeking enhanced remedies available under Elder Abuse and Dependent Adult Civil Protection Act; elder abuse claim under Act involved reckless neglect, or intentional abuse by elder's custodian, and thus was simply not encompassed within "professional negligence." [Smith v. Ben Bennett, Inc. \(App. 4 Dist. 2005\) 35 Cal.Rptr.3d 612, 133 Cal.App.4th 1507](#), review denied. [Limitation Of Actions ☞ 105\(1\)](#)

### Pleadings

Allegations that pretrial detainee allegedly assaulted by police officer was mentally ill and psychotic, and that he had mental limitations that restricted his ability to carry out normal activities or to protect his rights, were insufficient to plead that detainee was a dependent adult, as required to state claim under [California's](#) Elder Abuse Act. [Cabral v. County of Glenn, E.D.Cal.2009, 624 F.Supp.2d 1184](#), stay granted in part [2009 WL 1911692](#). [Protection Of Endangered Persons ☞ 10](#)

### Punitive damages

The procedural prerequisites to seeking punitive damages in an action for damages arising out of the professional negligence of a health care provider did not apply to punitive damages claim in action against skilled nursing facility for elder abuse seeking the heightened civil remedies provided under the Elder Abuse and Dependent Adult Civil Protection Act. [Covenant Care, Inc. v. Superior Court \(2004\) 11 Cal.Rptr.3d 222, 32 Cal.4th 771, 86 P.3d 290](#). [Health ☞ 831](#)

[West's Ann. Cal. Welf. & Inst. Code § 15600](#), CA WEL & INST § 15600

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