

DEFINITION AND STANDARD OF PROOF

Elder abuse restraining orders are created by and are part of the remedies under Elder Abuse and Dependent Adult Protection Act (W&I Code section 15600 et seq) (“EADACPA”). In EADACPA, the legislature explicitly recognized the unique vulnerabilities of elders and dependent adults. To this end, the Legislature created a definition of elder abuse that was both broad in scope and required a lower standard of proof than both domestic violence and civil harassment restraining orders.

EADACPA defines abuse of an elder or a dependent adult as either (a) physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering, or (b) the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. W&I 15610.07. "Goods and services necessary to avoid physical harm or mental suffering" include, but are not limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, adequate clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from malnutrition, and transportation and assistance necessary to secure any basic needs. W&I §15610.35

Welfare & Institutions Code section 15657.03 allows the court to restrain any person for the purpose of preventing a recurrence of abuse if a declaration shows reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult. Unlike the civil harassment statute which requires the court to find clear and convincing evidence that unlawful harassment exists (CCP 527.6(d)), the court may grant an elder abuse restraining order on a preponderance of the evidence. *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131. Additionally, the court in *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128 held that a protective order under EADACPA may be issued based on evidence of past abuse without any particularized showing that wrongful acts will continue or be repeated.

STANDING

Pursuant to Welfare & Institutions Code section 15657.03(a), a petition may be brought on behalf of an abused elder by a conservator, trustee, attorney-in-fact, a person appointed as a guardian ad litem for the elder or dependent adult, or other person legally authorized to seek such relief. Petitioner is _____. (attach document)

SPECIFIC ABUSE DEFINITIONS – TAILOR TO CASE

"Mental suffering" means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult. W&I §15610.53.

The Welfare & Institutions Code §15610.43 defines isolation as acts 1) intentionally committed for the purpose of preventing, and that do serve to prevent, an elder from receiving his or her mail or telephone calls, and 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.

Neglect" means either of the following: (1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise; (2) The negligent failure of an elder or dependent adult

to exercise that degree of self-care that a reasonable person in a like position would exercise. Neglect includes, but is not limited to, failure to assist with the provision of medical care, personal hygiene, adequate clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from malnutrition and dehydration, and transportation and assistance necessary to secure any basic needs. W&I Code §15610.57.

The Welfare & Institutions Code section 15610.30 provides that financial abuse occurs when a person 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.

Undue influence means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. W&I Code §15610.70.

RELIEF REQUESTED

In addition to the standard conduct and stay-away orders, Welfare & Institutions Code section 15657.03 (a) (3) (C) allows the court to make orders enjoining a party from specified behavior that the court determines is necessary to effectuate the conduct and stay-away orders. Petitioner requests that the court make the following orders necessary to protect the victim: