

**ASSEMBLY BILL**

**No. 2140**

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**Introduced by Assembly Members Simitian and Bates**

February 20, 2002

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An act to amend Section 368 of, and to add Section 243.25 to, the Penal Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2140, as introduced, Simitian. Elder abuse.

Under existing law, any willful and unlawful use of force or violence on the person of another is battery, a misdemeanor punishable by a fine of up to \$2,000, imprisonment in a county jail of up to 6 months, or by both that fine and imprisonment. Under existing law, battery on specified classifications of victims, or under specified circumstances, are subject to specified, increased penalties.

This bill would increase the maximum period of imprisonment in a county jail to one year for a battery committed against the person of an elder or dependant adult, with knowledge that he or she is an elder or dependant adult.

Under existing law, a person is guilty of a misdemeanor when, under circumstances or conditions other than those likely to produce great bodily harm or death, he or she willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer unjustifiable physical pain or mental suffering. Under existing law, it is also a misdemeanor for a person, having the care or custody of any elder or dependent adult, to willfully cause or permit the health of the elder or dependent adult to be injured or to willfully cause or permit the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered.

Under existing law, the maximum punishment for either of these offenses is a fine of \$1,000, 6 months in a county jail, or both that fine and imprisonment.

This bill would increase the maximum punishment for these offenses to a fine not to exceed \$2,000, imprisonment in a county jail not to exceed one year, or both.

By expanding county jail punishment for the above criminal offenses, this bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 243.25 is added to the Penal Code, to  
2 read:

3 243.25. When a battery is committed against the person of an  
4 elder or dependant adult as defined in Section 368, with  
5 knowledge that he or she is an elder or dependant adult, the offense  
6 shall be punished by a fine not to exceed two thousand dollars  
7 (\$2,000), or by imprisonment in a county jail not to exceed one  
8 year, or by both that fine and imprisonment.

9 SEC. 2. Section 368 of the Penal Code is amended to read:

10 368. (a) The Legislature finds and declares that crimes  
11 against elders and dependent adults are deserving of special  
12 consideration and protection, not unlike the special protections  
13 provided for minor children, because elders and dependent adults  
14 may be confused, on various medications, mentally or physically  
15 impaired, or incompetent, and therefore less able to protect  
16 themselves, to understand or report criminal conduct, or to testify  
17 in court proceedings on their own behalf.

18 (b) (1) Any person who, under circumstances or conditions  
19 likely to produce great bodily harm or death, willfully causes or  
20 permits any elder or dependent adult, with knowledge that he or  
21 she is an elder or a dependent adult, to suffer, or inflicts thereon



1 unjustifiable physical pain or mental suffering, or having the care  
2 or custody of any elder or dependent adult, willfully causes or  
3 permits the person or health of the elder or dependent adult to be  
4 injured, or willfully causes or permits the elder or dependent adult  
5 to be placed in a situation in which his or her person or health is  
6 endangered, is punishable by imprisonment in a county jail not  
7 exceeding one year, or by a fine not to exceed six thousand dollars  
8 (\$6,000), or by both that fine and imprisonment, or in the state  
9 prison for two, three, or four years.

10 (2) If in the commission of an offense described in paragraph  
11 (1), the victim suffers great bodily injury, as defined in Section  
12 12022.7, the defendant shall receive an additional term in the state  
13 prison as follows:

14 (A) Three years if the victim is under 70 years of age.

15 (B) Five years if the victim is 70 years of age or older.

16 (3) If in the commission of an offense described in paragraph  
17 (1), the defendant proximately causes the death of the victim, the  
18 defendant shall receive an additional term in the state prison as  
19 follows:

20 (A) Five years if the victim is under 70 years of age.

21 (B) Seven years if the victim is 70 years of age or older.

22 (c) Any person who, under circumstances or conditions other  
23 than those likely to produce great bodily harm or death, willfully  
24 causes or permits any elder or dependent adult, with knowledge  
25 that he or she is an elder or a dependent adult, to suffer, or inflicts  
26 thereon unjustifiable physical pain or mental suffering, or having  
27 the care or custody of any elder or dependent adult, willfully  
28 causes or permits the person or health of the elder or dependent  
29 adult to be injured or willfully causes or permits the elder or  
30 dependent adult to be placed in a situation in which his or her  
31 person or health may be endangered, is guilty of a misdemeanor,  
32 *punishable by a fine not to exceed two thousand dollars (\$2,000),*  
33 *or by imprisonment in a county jail not to exceed one year, or by*  
34 *both that fine and imprisonment.*

35 (d) Any person who is not a caretaker who violates any  
36 provision of law proscribing theft or embezzlement, with respect  
37 to the property of an elder or dependent adult, and who knows or  
38 reasonably should know that the victim is an elder or dependent  
39 adult, is punishable by imprisonment in a county jail not exceeding  
40 one year, or in the state prison for two, three, or four years, when



1 the money, labor, or real or personal property taken is of a value  
2 exceeding four hundred dollars (\$400); and by a fine not exceeding  
3 one thousand dollars (\$1,000), by imprisonment in a county jail  
4 not exceeding one year, or by both that fine and imprisonment,  
5 when the money, labor, or real or personal property taken is of a  
6 value not exceeding four hundred dollars (\$400).

7 (e) Any caretaker of an elder or a dependent adult who violates  
8 any provision of law proscribing theft or embezzlement, with  
9 respect to the property of that elder or dependent adult, is  
10 punishable by imprisonment in a county jail not exceeding one  
11 year, or in the state prison for two, three, or four years when the  
12 money, labor, or real or personal property taken is of a value  
13 exceeding four hundred dollars (\$400), and by a fine not exceeding  
14 one thousand dollars (\$1,000), by imprisonment in a county jail  
15 not exceeding one year, or by both that fine and imprisonment,  
16 when the money, labor, or real or personal property taken is of a  
17 value not exceeding four hundred dollars (\$400).

18 (f) Any person who commits the false imprisonment of an elder  
19 or dependent adult by the use of violence, menace, fraud, or deceit  
20 is punishable by imprisonment in the state prison for two, three,  
21 or four years.

22 (g) As used in this section, “elder” means any person who is  
23 65 years of age or older.

24 (h) As used in this section, “dependent adult” means any  
25 person who is between the ages of 18 and 64, who has physical or  
26 mental limitations which restrict his or her ability to carry out  
27 normal activities or to protect his or her rights, including, but not  
28 limited to, persons who have physical or developmental  
29 disabilities or whose physical or mental abilities have diminished  
30 because of age. “Dependent adult” includes any person between  
31 the ages of 18 and 64 who is admitted as an inpatient to a 24-hour  
32 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of  
33 the Health and Safety Code.

34 (i) As used in this section, “caretaker” means any person who  
35 has the care, custody, or control of, or who stands in a position of  
36 trust with, an elder or a dependent adult.

37 (j) Nothing in this section shall preclude prosecution under  
38 both this section and Section 187 or 12022.7 or any other provision  
39 of law. However, a person shall not receive an additional term of  
40 imprisonment under both paragraphs (2) and (3) of subdivision (b)



1 for any single offense, nor shall a person receive an additional term  
2 of imprisonment under both Section 12022.7 and paragraph (2) or  
3 (3) of subdivision (b) for any single offense.

4 SEC. 3. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.

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