

AMENDED IN ASSEMBLY APRIL 10, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2140**

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**Introduced by Assembly Members Simitian and Bates, Bates,  
and Keeley  
(Coauthor: Assembly Member Diaz)**

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 amended, 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 a dependant adult, with knowledge that he or she is an elder or a 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 a 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 *a* dependant adult as defined in Section 368, with  
5 knowledge that he or she is an elder or *a* dependant adult, the  
6 offense shall be punished by a fine not to exceed two thousand  
7 dollars (\$2,000), or by imprisonment in a county jail not to exceed  
8 one 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.



1 (b) (1) Any person who, under circumstances or conditions  
2 likely to produce great bodily harm or death, willfully causes or  
3 permits any elder or dependent adult, with knowledge that he or  
4 she is an elder or a dependent adult, to suffer, or inflicts thereon  
5 unjustifiable physical pain or mental suffering, or having the care  
6 or custody of any elder or dependent adult, willfully causes or  
7 permits the person or health of the elder or dependent adult to be  
8 injured, or willfully causes or permits the elder or dependent adult  
9 to be placed in a situation in which his or her person or health is  
10 endangered, is punishable by imprisonment in a county jail not  
11 exceeding one year, or by a fine not to exceed six thousand dollars  
12 (\$6,000), or by both that fine and imprisonment, or in the state  
13 prison for two, three, or four years.

14 (2) If in the commission of an offense described in paragraph  
15 (1), the victim suffers great bodily injury, as defined in Section  
16 12022.7, the defendant shall receive an additional term in the state  
17 prison as follows:

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

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

20 (3) If in the commission of an offense described in paragraph  
21 (1), the defendant proximately causes the death of the victim, the  
22 defendant shall receive an additional term in the state prison as  
23 follows:

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

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

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

39 (d) Any person who is not a caretaker who violates any  
40 provision of law proscribing theft or embezzlement, with respect



1 to the property of an elder or *a* dependent adult, and who knows  
2 or reasonably should know that the victim is an elder or *a*  
3 dependent adult, is punishable by imprisonment in a county jail not  
4 exceeding one year, or in the state prison for two, three, or four  
5 years, when the money, labor, or real or personal property taken  
6 is of a value exceeding four hundred dollars (\$400); and by a fine  
7 not exceeding one thousand dollars (\$1,000), by imprisonment in  
8 a county jail not exceeding one year, or by both that fine and  
9 imprisonment, when the money, labor, or real or personal property  
10 taken is of a value not exceeding four hundred dollars (\$400).

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

22 (f) Any person who commits the false imprisonment of an elder  
23 or *a* dependent adult by the use of violence, menace, fraud, or  
24 deceit is punishable by imprisonment in the state prison for two,  
25 three, or four years.

26 (g) As used in this section, “elder” means any person who is  
27 65 years of age or older.

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

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



1 (j) Nothing in this section shall preclude prosecution under  
2 both this section and Section 187 or 12022.7 or any other provision  
3 of law. However, a person shall not receive an additional term of  
4 imprisonment under both paragraphs (2) and (3) of subdivision (b)  
5 for any single offense, nor shall a person receive an additional term  
6 of imprisonment under both Section 12022.7 and paragraph (2) or  
7 (3) of subdivision (b) for any single offense.

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

