

AMENDED IN SENATE JUNE 25, 2002

AMENDED IN ASSEMBLY APRIL 30, 2002

AMENDED IN ASSEMBLY APRIL 10, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2140

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

February 20, 2002

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 dependent adult, with knowledge that he or she is an elder or a dependent 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 *person or* 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 *a 2nd or subsequent commission of* these offenses to a fine not to exceed \$2,000, imprisonment in a county jail not to exceed one year, or both *that fine and imprisonment.*

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 dependent adult as defined in Section 368, with
5 knowledge that he or she is an elder or a dependent adult, the
6 offense shall be punishable 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



1 may be confused, on various medications, mentally or physically
2 impaired, or incompetent, and therefore less able to protect
3 themselves, to understand or report criminal conduct, or to testify
4 in court proceedings on their own behalf.

5 (b) (1) Any person who, under circumstances or conditions
6 likely to produce great bodily harm or death, willfully causes or
7 permits any elder or dependent adult, with knowledge that he or
8 she is an elder or a dependent adult, to suffer, or inflicts thereon
9 unjustifiable physical pain or mental suffering, or having the care
10 or custody of any elder or dependent adult, willfully causes or
11 permits the person or health of the elder or dependent adult to be
12 injured, or willfully causes or permits the elder or dependent adult
13 to be placed in a situation in which his or her person or health is
14 endangered, is punishable by imprisonment in a county jail not
15 exceeding one year, or by a fine not to exceed six thousand dollars
16 (\$6,000), or by both that fine and imprisonment, or *by*
17 *imprisonment* in the state prison for two, three, or four years.

18 (2) If in the commission of an offense described in paragraph
19 (1), the victim suffers great bodily injury, as defined in Section
20 12022.7, the defendant shall receive an additional term in the state
21 prison as follows:

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

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

24 (3) If in the commission of an offense described in paragraph
25 (1), the defendant proximately causes the death of the victim, the
26 defendant shall receive an additional term in the state prison as
27 follows:

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

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

30 (c) Any person who, under circumstances or conditions other
31 than those likely to produce great bodily harm or death, willfully
32 causes or permits any elder or dependent adult, with knowledge
33 that he or she is an elder or a dependent adult, to suffer, or inflicts
34 thereon unjustifiable physical pain or mental suffering, or having
35 the care or custody of any elder or dependent adult, willfully
36 causes or permits the person or health of the elder or dependent
37 adult to be injured or willfully causes or permits the elder or
38 dependent adult to be placed in a situation in which his or her
39 person or health may be endangered, is guilty of a misdemeanor;.
40 *A second or subsequent violation of this subdivision is punishable*



1 by a fine not to exceed two thousand dollars (\$2,000), or by
2 imprisonment in a county jail not to exceed one year, or by both
3 that fine and imprisonment.

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

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

27 (f) Any person who commits the false imprisonment of an elder
28 or a dependent adult by the use of violence, menace, fraud, or
29 deceit is punishable by imprisonment in the state prison for two,
30 three, or four years.

31 (g) As used in this section, “elder” means any person who is
32 65 years of age or older.

33 (h) As used in this section, “dependent adult” means any
34 person who is between the ages of 18 and 64, who has physical or
35 mental limitations which restrict his or her ability to carry out
36 normal activities or to protect his or her rights, including, but not
37 limited to, persons who have physical or developmental
38 disabilities or whose physical or mental abilities have diminished
39 because of age. “Dependent adult” includes any person between
40 the ages of 18 and 64 who is admitted as an inpatient to a 24-hour



1 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
2 the Health and Safety Code.

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

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

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

