

ASSEMBLY BILL

No. 2611

Introduced by Assembly Member Simitian

February 20, 2004

An act to amend Section 368 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2611, as introduced, Simitian. Elder abuse.

Existing law proscribes crimes against elder and dependent adults involving physical and financial abuse.

This bill would make a technical, nonsubstantive change to these provisions.

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

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

1 SECTION 1. Section 368 of the Penal Code is amended to
2 read:

3 368. (a) The Legislature *hereby* finds and declares that
4 crimes against elders and dependent adults are deserving of special
5 consideration and protection, not unlike the special protections
6 provided for minor children, because elders and dependent adults
7 may be confused, on various medications, mentally or physically
8 impaired, or incompetent, and therefore less able to protect
9 themselves, to understand or report criminal conduct, or to testify
10 in court proceedings on their own behalf.

11 (b) (1) Any person who, under circumstances or conditions
12 likely to produce great bodily harm or death, willfully causes or

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

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

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

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

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

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

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

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

38 (d) Any person who is not a caretaker who violates any
39 provision of law proscribing theft, embezzlement, forgery, or
40 fraud, or who violates Section 530.5 proscribing identity theft,



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

13 (e) Any caretaker of an elder or a dependent adult who violates
14 any provision of law proscribing theft, embezzlement, forgery, or
15 fraud, or who violates Section 530.5 proscribing identity theft,
16 with respect to the property or personal identifying information of
17 that elder or dependent adult, is punishable by imprisonment in a
18 county jail not exceeding one year, or in the state prison for two,
19 three, or four years when the money, labor, goods, services, or real
20 or personal property taken or obtained is of a value exceeding four
21 hundred dollars (\$400), and by a fine not exceeding one thousand
22 dollars (\$1,000), by imprisonment in a county jail not exceeding
23 one year, or by both that fine and imprisonment, when the money,
24 labor, goods, services, or real or personal property taken or
25 obtained is of a value not exceeding four hundred dollars (\$400).

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

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

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

