

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 768

**Introduced by Assembly Member Torres
(Coauthor: Assembly Member Bonnie Lowenthal)**

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 768, as amended, Torres. Elder abuse.

Existing law proscribes various crimes committed against an elder or dependent adult when the person knows or reasonably should know that the victim is an elder or dependent adult related to physical abuse, including causing or permitting an elder or dependent adult to suffer or inflicting thereon unjustifiable physical pain or mental suffering and violating.

This bill would delete the language requiring that the person either know or reasonably should know that the victim was an elder or dependent adult from the definitions of those crimes. The bill would also expand those crimes to include *willfully* causing or permitting an elder or dependent adult to sustain any wound or physical or psychological injury. Because this bill would expand the definitions of crimes, the 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 368 of the Penal Code is amended to
2 read:

3 368. (a) The Legislature finds and declares that crimes against
4 elders and dependent adults are deserving of special consideration
5 and protection, not unlike the special protections provided for
6 minor children, because elders and dependent adults may be
7 confused, on various medications, mentally or physically impaired,
8 or incompetent, and therefore less able to protect themselves, to
9 understand or report criminal conduct, or to testify in court
10 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
13 permits any elder or dependent adult to suffer, or inflicts thereon
14 unjustifiable physical pain or mental suffering, or *willfully* causes
15 or permits any elder or dependent adult to sustain any wound or
16 physical or psychological injury, or having the care or custody of
17 any elder or dependent adult, willfully causes or permits the person
18 or health of the elder or dependent adult to be injured, or willfully
19 causes or permits the elder or dependent adult to be placed in a
20 situation in which his or her person or health is endangered, is
21 punishable by imprisonment in a county jail not exceeding one
22 year, or by a fine not to exceed six thousand dollars (\$6,000), or
23 by both that fine and imprisonment, or by imprisonment in the
24 state prison for two, three, or four years.

25 (2) If in the commission of an offense described in paragraph
26 (1), the victim suffers great bodily injury, as defined in Section
27 12022.7, the defendant shall receive an additional term in the state
28 prison as follows:

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

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

31 (3) If in the commission of an offense described in paragraph
32 (1), the defendant proximately causes the death of the victim, the
33 defendant shall receive an additional term in the state prison as
34 follows:

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

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

2 (c) Any person who, under circumstances or conditions other
3 than those likely to produce great bodily harm or death, willfully
4 causes or permits any elder or dependent adult to suffer, or inflicts
5 thereon unjustifiable physical pain or mental suffering, or *willfully*
6 causes or permits any elder or dependent adult to sustain any
7 wound or physical or psychological injury, or having the care or
8 custody of any elder or dependent adult, willfully causes or permits
9 the person or health of the elder or dependent adult to be injured
10 or willfully causes or permits the elder or dependent adult to be
11 placed in a situation in which his or her person or health may be
12 endangered, is guilty of a misdemeanor. A second or subsequent
13 violation of this subdivision is punishable by a fine not to exceed
14 two thousand dollars (\$2,000), or by imprisonment in a county jail
15 not to exceed one year, or by both that fine and imprisonment.

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

29 (e) Any caretaker of an elder or a dependent adult who violates
30 any provision of law proscribing theft, embezzlement, forgery, or
31 fraud, or who violates Section 530.5 proscribing identity theft,
32 with respect to the property or personal identifying information of
33 that elder or dependent adult, is punishable by imprisonment in a
34 county jail not exceeding one year, or in the state prison for two,
35 three, or four years when the moneys, labor, goods, services, or
36 real or personal property taken or obtained is of a value exceeding
37 four hundred dollars (\$400), and by a fine not exceeding one
38 thousand dollars (\$1,000), by imprisonment in a county jail not
39 exceeding one year, or by both that fine and imprisonment, when
40 the moneys, labor, goods, services, or real or personal property

1 taken or obtained is of a value not exceeding four hundred dollars
2 (\$400).

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

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

9 (h) As used in this section, “dependent adult” means any person
10 who is between the ages of 18 and 64, who has physical or mental
11 limitations which restrict his or her ability to carry out normal
12 activities or to protect his or her rights, including, but not limited
13 to, persons who have physical or developmental disabilities or
14 whose physical or mental abilities have diminished because of
15 age. “Dependent adult” includes any person between the ages of
16 18 and 64 who is admitted as an inpatient to a 24-hour health
17 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
18 Health and Safety Code.

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

22 (j) Nothing in this section shall preclude prosecution under both
23 this section and Section 187 or 12022.7 or any other provision of
24 law. However, a person shall not receive an additional term of
25 imprisonment under both paragraphs (2) and (3) of subdivision
26 (b) for any single offense, nor shall a person receive an additional
27 term of imprisonment under both Section 12022.7 and paragraph
28 (2) or (3) of subdivision (b) for any single offense.

29 (k) In any case in which a person is convicted of violating these
30 provisions, the court may require him or her to receive appropriate
31 counseling as a condition of probation. Any defendant ordered to
32 be placed in a counseling program shall be responsible for paying
33 the expense of his or her participation in the counseling program
34 as determined by the court. The court shall take into consideration
35 the ability of the defendant to pay, and no defendant shall be denied
36 probation because of his or her inability to pay.

37 SEC. 2. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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