

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 18

Introduced by Senator Oropeza

December 1, 2008

~~An act to add Section 8594.5 to the Government Code, relating to emergency services. An act to amend Section 368 of the Penal Code, relating to crimes.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Oropeza. ~~Emergency services: Emergency Alert System. Elder or dependent adult abuse.~~

Existing law makes it a crime for a person who knows or reasonably should know that a person is an elder or dependant adult, under circumstances likely to produce great bodily harm or death, to willfully cause or permit any elder or dependent adult to suffer or inflict unjustifiably physical pain or mental suffering thereon, or to cause or permit the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, as specified. Existing law punishes a violation of this provision by imprisonment in a county jail not exceeding one year, or by a fine not to exceed \$6,000, or by both that fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 4 years.

This bill would increase the fine for a violation of that provision to an amount not to exceed \$10,000.

Under existing law, a person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes an elder or dependent adult to suffer, or inflicts physical pain or mental suffering thereon, or permits

the health of the elder or dependent adult to be endangered is guilty of a misdemeanor. Existing law punishes a second or subsequent violation of that provision by a fine not to exceed \$2,000 or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

This bill would increase the fine for a second or subsequent violation of that provision to an amount not to exceed \$5,000.

~~Existing law authorizes use of the Emergency Alert System to inform the public of local, state, and national emergencies:~~

~~This bill would require law enforcement agencies that are informed of a missing senior person, who is 65 years of age or older, and that determine the missing person has an impaired mental condition, the person disappearance poses a credible threat to his or her health and safety, and that there is information available that, if disseminated to the general public, could assist with the safe recovery of the missing person, to request, absent extenuating investigative needs, activation of the Emergency Alert System within the appropriate local area. By imposing new duties on local law enforcement agencies, the bill would create a state-mandated local program:~~

~~The bill would require the Department of the California Highway Patrol, in consultation with the Department of Justice and representatives from other organizations, to develop policies and procedures providing instruction specifying how law enforcement agencies, broadcasters participating in the Emergency Alert System, and any other intermediate emergency services agencies that may institute activation of the Emergency Alert System and, where appropriate, other supplemental warning systems shall proceed after a law enforcement agency receives a qualifying report of a missing senior person:~~

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions:~~

~~Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: *yes-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 finds and declares that ~~crimes against~~
4 elders and dependent adults are deserving of special consideration
5 and protection *against crimes*, 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 knows or reasonably should know that
12 a person is an elder or dependent adult and who, under
13 circumstances or conditions likely to produce great bodily harm
14 or death, willfully causes or permits any elder or dependent adult
15 to suffer, or inflicts thereon unjustifiable physical pain or mental
16 suffering, or having the care or custody of any elder or dependent
17 adult, willfully causes or permits the person or health of the elder
18 or dependent adult to be injured, or willfully causes or permits the
19 elder or dependent adult to be placed in a situation in which his or
20 her person or health is endangered, is punishable by imprisonment
21 in a county jail not exceeding one year, or by a fine not to exceed
22 ~~six~~ *ten* thousand dollars ~~(\$6,000)~~ (*\$10,000*), or by both that fine
23 and imprisonment, or by imprisonment in the state prison for two,
24 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.

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

37 (c) Any person who knows or reasonably should know that a
38 person is an elder or dependent adult and who, under circumstances

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

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

28 (e) Any caretaker of an elder or a dependent adult who violates
29 any provision of law proscribing theft, embezzlement, forgery, or
30 fraud, or who violates Section 530.5 proscribing identity theft,
31 with respect to the property or personal identifying information of
32 that elder or dependent adult, is punishable by imprisonment in a
33 county jail not exceeding one year, or in the state prison for two,
34 three, or four years when the moneys, labor, goods, services, or
35 real or personal property taken or obtained is of a value exceeding
36 four hundred dollars (\$400), and by a fine not exceeding one
37 thousand dollars (\$1,000), by imprisonment in a county jail not
38 exceeding one year, or by both that fine and imprisonment, when
39 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 ~~SECTION 1. Section 8594.5 is added to the Government Code,~~
38 ~~to read:~~

39 ~~8594.5. (a) If a senior person is reported missing to a law~~
40 ~~enforcement agency and the agency determines that the person's~~

1 location is unknown, the person has an impaired mental condition,
2 the person disappearance poses a credible threat to the his or her
3 health and safety, and there is information available that, if
4 disseminated to the general public, could assist in the safe recovery
5 of the missing person, the agency, through a person authorized to
6 activate the Emergency Alert System, shall, absent extenuating
7 investigative needs, request activation of the Emergency Alert
8 System within the appropriate local area. Law enforcement
9 agencies shall only request activation of the Emergency Alert
10 System for a missing senior person if these requirements are met.

11 The Department of the California Highway Patrol, if requested
12 by a law enforcement agency, shall activate the system.

13 (b) The Department of the California Highway Patrol, in
14 consultation with the Department of Justice, as well as a
15 representative from the California State Sheriffs' Association, the
16 California Police Chiefs' Association, and the California Peace
17 Officers' Association, shall develop policies and procedures
18 providing instruction specifying how law enforcement agencies,
19 broadcasters participating in the Emergency Alert System, and
20 any other intermediate emergency agencies that may institute
21 activation of the Emergency Alert System, and, where appropriate,
22 other supplemental warning systems, shall proceed after a law
23 enforcement agency receives a qualifying report of a missing senior
24 person. Those policies and procedures shall include, but not be
25 limited to, the following:

26 (1) Procedures for transfer of information regarding the missing
27 senior citizen from the law enforcement agency to the broadcasters.

28 (2) Specification of the event code or codes that should be used
29 if the Emergency Alert System is activated to report a missing
30 senior person.

31 (3) Recommended language for a missing senior person alert.

32 (4) Specification of information that must be included by the
33 reporting law enforcement agency, including which agency a
34 person with information relating to the missing senior person
35 should contact and how that person should contact the agency.

36 (5) Recommendations on the extent of the geographical area to
37 which a missing senior person alert should be broadcast.

38 (e) The Department of the California Highway Patrol, in
39 consultation with the Department of Justice, shall review the Silver
40 Alert Plan as adopted by other states for guidance in developing

1 appropriate policies and procedures for use of the Emergency Alert
2 System and, where appropriate, other supplemental warning
3 systems to report a missing senior person.

4 (d) For the purpose of this section, “senior person” means any
5 person who is 65 years of age or older.

6 SEC. 2. ~~If the Commission on State Mandates determines that~~
7 ~~this act contains costs mandated by the state, reimbursement to~~
8 ~~local agencies and school districts for those costs shall be made~~
9 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
10 ~~4 of Title 2 of the Government Code.~~