

ASSEMBLY BILL

No. 332

Introduced by Assembly Member Butler

February 10, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 332, as introduced, Butler. Elder abuse.

Existing law provides that any person who is not a caretaker of an elder or dependent adult, who knows or reasonably should know that the victim is an elder or a dependent adult, or any person who is a caretaker of an elder or dependent adult, and that person violates specified identity theft provisions of law, with respect to the property or personal identifying information of an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for 2, 3, or 4 years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950, or by a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950.

This bill would instead provide that the penalties would be (1) for a first offense, imprisonment in a county jail not exceeding one year, or in the state prison for 2, 3, or 4 years, and a fine of at least \$5,000, and for each subsequent offense, those same penalties and an additional fine of at least \$3,000 for each subsequent violation, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950; and (2) for a first offense, by a fine of at

least \$5,000 and imprisonment in a county jail not exceeding one year, and for each subsequent offense, those same penalties and an additional fine of at least \$3,000 for each subsequent violation, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950.

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 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 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 thousand dollars (\$6,000), or by both that fine and
23 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.

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

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

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

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

21 (d) (1) Any person who is not a caretaker who violates any
22 provision of law proscribing theft, embezzlement, forgery, or fraud,
23 ~~or who violates Section 530.5 proscribing identity theft,~~ with
24 respect to the property or personal identifying information of an
25 elder or a dependent adult, and who knows or reasonably should
26 know that the victim is an elder or a dependent adult, is punishable
27 ~~by~~ *as follows:*

28 (A) *By* imprisonment in a county jail not exceeding one year,
29 or in the state prison for two, three, or four years, when the moneys,
30 labor, goods, services, or real or personal property taken or obtained
31 is of a value exceeding nine hundred fifty dollars (\$950); ~~and by.~~

32 (B) *By* a fine not exceeding one thousand dollars (\$1,000), by
33 imprisonment in a county jail not exceeding one year, or by both
34 that fine and imprisonment, when the moneys, labor, goods,
35 services, or real or personal property taken or obtained is of a value
36 not exceeding nine hundred fifty dollars (\$950).

37 (2) *Any person who is not a caretaker who violates Section*
38 *530.5 proscribing identity theft with respect to the property or*
39 *personal identifying information of an elder or a dependent adult,*

1 *and who knows or reasonably should know that the victim is an*
 2 *elder or a dependent adult, is punishable as follows:*

3 (A) *For a first offense, by imprisonment in a county jail not*
 4 *exceeding one year, or in the state prison for two, three, or four*
 5 *years, and a fine of at least five thousand dollars (\$5,000), and*
 6 *for each subsequent offense, those same penalties and an additional*
 7 *fine of at least three thousand dollars (\$3,000) for each subsequent*
 8 *violation, when the moneys, labor, goods, services, or real or*
 9 *personal property taken or obtained is of a value exceeding nine*
 10 *hundred fifty dollars (\$950).*

11 (B) *For a first offense, by a fine of at least five thousand dollars*
 12 *(\$5,000) and by imprisonment in a county jail not exceeding one*
 13 *year, and for each subsequent offense, those same penalties and*
 14 *an additional fine of at least three thousand dollars (\$3,000) for*
 15 *each subsequent violation, when the moneys, labor, goods, services,*
 16 *or real or personal property taken or obtained is of a value not*
 17 *exceeding nine hundred fifty dollars (\$950).*

18 (e) (1) *Any caretaker of an elder or a dependent adult who*
 19 *violates any provision of law proscribing theft, embezzlement,*
 20 *forgery, or fraud, or who violates Section 530.5 proscribing identity*
 21 *theft, with respect to the property or personal identifying*
 22 *information of that elder or dependent adult, is punishable by as*
 23 *follows:*

24 (A) *By imprisonment in a county jail not exceeding one year,*
 25 *or in the state prison for two, three, or four years when the moneys,*
 26 *labor, goods, services, or real or personal property taken or obtained*
 27 *is of a value exceeding nine hundred fifty dollars (\$950), and by.*

28 (B) *By a fine not exceeding one thousand dollars (\$1,000), by*
 29 *imprisonment in a county jail not exceeding one year, or by both*
 30 *that fine and imprisonment, when the moneys, labor, goods,*
 31 *services, or real or personal property taken or obtained is of a value*
 32 *not exceeding nine hundred fifty dollars (\$950).*

33 (2) *Any caretaker of an elder or a dependent adult who violates*
 34 *Section 530.5 proscribing identity theft, with respect to the property*
 35 *or personal identifying information of that elder or dependent*
 36 *adult, is punishable as follows:*

37 (A) *For a first offense, by imprisonment in a county jail not*
 38 *exceeding one year, or in the state prison for two, three, or four*
 39 *years, and a fine of at least five thousand dollars (\$5,000) and for*
 40 *each subsequent offense, those same penalties and an additional*

1 *fine of at least three thousand dollars (\$3,000) for each subsequent*
2 *violation, when the moneys, labor, goods, services, or real or*
3 *personal property taken or obtained is of a value exceeding nine*
4 *hundred fifty dollars (\$950).*

5 (B) *For a first offense, by a fine of at least five thousand dollars*
6 *(\$5,000) and imprisonment in a county jail not exceeding one year,*
7 *and for each subsequent offense, those penalties and an additional*
8 *fine of at least three thousand dollars (\$3,000) for each subsequent*
9 *violation when the moneys, labor, goods, services, or real or*
10 *personal property taken or obtained is of a value not exceeding*
11 *nine hundred fifty dollars (\$950).*

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

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

18 (h) As used in this section, “dependent adult” means any person
19 who is between the ages of 18 and 64, who has physical or mental
20 limitations which restrict his or her ability to carry out normal
21 activities or to protect his or her rights, including, but not limited
22 to, persons who have physical or developmental disabilities or
23 whose physical or mental abilities have diminished because of
24 age. “Dependent adult” includes any person between the ages of
25 18 and 64 who is admitted as an inpatient to a 24-hour health
26 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
27 Health and Safety Code.

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

31 (j) Nothing in this section shall preclude prosecution under both
32 this section and Section 187 or 12022.7 or any other provision of
33 law. However, a person shall not receive an additional term of
34 imprisonment under both paragraphs (2) and (3) of subdivision
35 (b) for any single offense, nor shall a person receive an additional
36 term of imprisonment under both Section 12022.7 and paragraph
37 (2) or (3) of subdivision (b) for any single offense.

38 (k) In any case in which a person is convicted of violating these
39 provisions, the court may require him or her to receive appropriate
40 counseling as a condition of probation. Any defendant ordered to

1 be placed in a counseling program shall be responsible for paying
2 the expense of his or her participation in the counseling program
3 as determined by the court. The court shall take into consideration
4 the ability of the defendant to pay, and no defendant shall be denied
5 probation because of his or her inability to pay.

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