

AMENDED IN SENATE JULY 6, 2011
AMENDED IN SENATE JULY 1, 2011
AMENDED IN ASSEMBLY MAY 11, 2011
AMENDED IN ASSEMBLY APRIL 6, 2011
AMENDED IN ASSEMBLY MARCH 29, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 amended, 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 a 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.

This bill would make those offenses punishable by a fine not exceeding \$2,500, or by imprisonment in the county jail not exceeding

one year, or by both that fine or imprisonment, or alternatively by a fine not exceeding \$10,000, or by imprisonment in a state prison for 2, 3, or 4 years, or by both that fine and imprisonment, if the value of the assets taken is of a value exceeding \$950. The bill would make other technical, nonsubstantive changes.

This bill would incorporate changes to Section 368 of the Penal Code proposed by AB 109, to be operative if both bills are enacted and became operative as specified.

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, as amended by
2 Section 9 of Chapter 28 of the Third Extraordinary Session of the
3 Statutes of 2009, is amended to read:

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

12 (b) (1) Any person who knows or reasonably should know that
13 a person is an elder or dependent adult and who, under
14 circumstances or conditions likely to produce great bodily harm
15 or death, willfully causes or permits any elder or dependent adult
16 to suffer, or inflicts thereon unjustifiable physical pain or mental
17 suffering, or having the care or custody of any elder or dependent
18 adult, willfully causes or permits the person or health of the elder
19 or dependent adult to be injured, or willfully causes or permits the
20 elder or dependent adult to be placed in a situation in which his or
21 her person or health is endangered, is punishable by imprisonment
22 in a county jail not exceeding one year, or by a fine not to exceed
23 six thousand dollars (\$6,000), or by both that fine and
24 imprisonment, or by imprisonment in the state prison for two,
25 three, or four years.

26 (2) If in the commission of an offense described in paragraph
27 (1), the victim suffers great bodily injury, as defined in Section

1 12022.7, the defendant shall receive an additional term in the state
2 prison as follows:

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

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

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

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

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

11 (c) Any person who knows or reasonably should know that a
12 person is an elder or dependent adult and who, under circumstances
13 or conditions other than those 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 may be endangered, is guilty of a
21 misdemeanor. A second or subsequent violation of this subdivision
22 is punishable by a fine not to exceed two thousand dollars (\$2,000),
23 or by imprisonment in a county jail not to exceed one year, or by
24 both that fine and imprisonment.

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

31 (1) By a fine not exceeding two thousand five hundred dollars
32 (\$2,500), or by imprisonment in a county jail not exceeding one
33 year, or by both that fine and imprisonment, or by a fine not
34 exceeding ten thousand dollars (\$10,000), or by imprisonment in
35 the state prison for two, three, or four years, or by both that fine
36 and imprisonment, when the moneys, labor, goods, services, or
37 real or personal property taken or obtained is of a value exceeding
38 nine hundred fifty dollars (\$950).

39 (2) By a fine not exceeding one thousand dollars (\$1,000), by
40 imprisonment in a county jail not exceeding one year, or by both

1 that fine and imprisonment, when the moneys, labor, goods,
2 services, or real or personal property taken or obtained is of a value
3 not exceeding nine hundred fifty dollars (\$950).

4 (e) Any caretaker of an elder or a dependent adult who violates
5 any provision of law proscribing theft, embezzlement, forgery, or
6 fraud, or who violates Section 530.5 proscribing identity theft,
7 with respect to the property or personal identifying information of
8 that elder or dependent adult, is punishable as follows:

9 (1) By a fine not exceeding two thousand five hundred dollars
10 (\$2,500), or by imprisonment in a county jail not exceeding one
11 year, or by both that fine and imprisonment, or by a fine not
12 exceeding ten thousand dollars (\$10,000), or by imprisonment in
13 the state prison for two, three, or four years, or by both that fine
14 and imprisonment, when the moneys, labor, goods, services, or
15 real or personal property taken or obtained is of a value exceeding
16 nine hundred fifty dollars (\$950).

17 (2) By a fine not exceeding one thousand dollars (\$1,000), by
18 imprisonment in a county jail not exceeding one year, or by both
19 that fine and imprisonment, when the moneys, labor, goods,
20 services, or real or personal property taken or obtained is of a value
21 not exceeding nine hundred fifty dollars (\$950).

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

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

28 (h) As used in this section, “dependent adult” means any person
29 who is between the ages of 18 and 64, who has physical or mental
30 limitations which restrict his or her ability to carry out normal
31 activities or to protect his or her rights, including, but not limited
32 to, persons who have physical or developmental disabilities or
33 whose physical or mental abilities have diminished because of
34 age. “Dependent adult” includes any person between the ages of
35 18 and 64 who is admitted as an inpatient to a 24-hour health
36 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
37 Health and Safety Code.

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

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

8 (k) In any case in which a person is convicted of violating these
9 provisions, the court may require him or her to receive appropriate
10 counseling as a condition of probation. Any defendant ordered to
11 be placed in a counseling program shall be responsible for paying
12 the expense of his or her participation in the counseling program
13 as determined by the court. The court shall take into consideration
14 the ability of the defendant to pay, and no defendant shall be denied
15 probation because of his or her inability to pay.

16 SEC. 1.5. Section 368 of the Penal Code, as amended by
17 Section 336 of Chapter 15 of the Statutes of 2011, is amended to
18 read:

19 368. (a) The Legislature finds and declares that crimes against
20 elders and dependent adults are deserving of special consideration
21 and protection, not unlike the special protections provided for
22 minor children, because elders and dependent adults may be
23 confused, on various medications, mentally or physically impaired,
24 or incompetent, and therefore less able to protect themselves, to
25 understand or report criminal conduct, or to testify in court
26 proceedings on their own behalf.

27 (b) (1) Any person who knows or reasonably should know that
28 a person is an elder or dependent adult and who, under
29 circumstances or conditions likely to produce great bodily harm
30 or death, willfully causes or permits any elder or dependent adult
31 to suffer, or inflicts thereon unjustifiable physical pain or mental
32 suffering, or having the care or custody of any elder or dependent
33 adult, willfully causes or permits the person or health of the elder
34 or dependent adult to be injured, or willfully causes or permits the
35 elder or dependent adult to be placed in a situation in which his or
36 her person or health is endangered, is punishable by imprisonment
37 in a county jail not exceeding one year, or by a fine not to exceed
38 six thousand dollars (\$6,000), or by both that fine and
39 imprisonment, or by imprisonment in the state prison for two,
40 three, or four years.

1 (2) If in the commission of an offense described in paragraph
 2 (1), the victim suffers great bodily injury, as defined in Section
 3 12022.7, the defendant shall receive an additional term in the state
 4 prison as follows:

- 5 (A) Three years if the victim is under 70 years of age.
- 6 (B) Five years if the victim is 70 years of age or older.

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

- 11 (A) Five years if the victim is under 70 years of age.
- 12 (B) Seven years if the victim is 70 years of age or older.
- 13 (c) Any person who knows or reasonably should know that a
 14 person is an elder or dependent adult and who, under circumstances
 15 or conditions other than those likely to produce great bodily harm
 16 or death, willfully causes or permits any elder or dependent adult
 17 to suffer, or inflicts thereon unjustifiable physical pain or mental
 18 suffering, or having the care or custody of any elder or dependent
 19 adult, willfully causes or permits the person or health of the elder
 20 or dependent adult to be injured or willfully causes or permits the
 21 elder or dependent adult to be placed in a situation in which his or
 22 her person or health may be endangered, is guilty of a
 23 misdemeanor. A second or subsequent violation of this subdivision
 24 is punishable by a fine not to exceed two thousand dollars (\$2,000),
 25 or by imprisonment in a county jail not to exceed one year, or by
 26 both that fine and imprisonment.

27 (d) Any person who is not a caretaker who violates any provision
 28 of law proscribing theft, embezzlement, forgery, or fraud, or who
 29 violates Section 530.5 proscribing identity theft, with respect to
 30 the property or personal identifying information of an elder or a
 31 dependent adult, and who knows or reasonably should know that
 32 the victim is an elder or a dependent adult, is punishable as follows:

- 33 (1) By a fine not exceeding two thousand five hundred dollars
 34 (\$2,500), or by imprisonment in a county jail not exceeding one
 35 year, or by both that fine and imprisonment, or by a fine not
 36 exceeding ten thousand dollars (\$10,000), or by imprisonment
 37 pursuant to subdivision (h) of Section 1170 for two, three, or four
 38 years, or by both that fine and imprisonment, when the moneys,
 39 labor, goods, services, or real or personal property taken or obtained
 40 is of a value exceeding nine hundred fifty dollars (\$950).

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

6 (e) Any caretaker of an elder or a dependent adult who violates
7 any provision of law proscribing theft, embezzlement, forgery, or
8 fraud, or who violates Section 530.5 proscribing identity theft,
9 with respect to the property or personal identifying information of
10 that elder or dependent adult, is punishable as follows:

11 (1) By a fine not exceeding two thousand five hundred dollars
12 (\$2,500), or by imprisonment in a county jail not exceeding one
13 year, or by both that fine and imprisonment, or by a fine not
14 exceeding ten thousand dollars (\$10,000), or by imprisonment
15 pursuant to subdivision (h) of Section 1170 for two, three, or four
16 years, or by both that fine and imprisonment, when the moneys,
17 labor, goods, services, or real or personal property taken or obtained
18 is of a value exceeding nine hundred fifty dollars (\$950).

19 (2) By a fine not exceeding one thousand dollars (\$1,000), by
20 imprisonment in a county jail not exceeding one year, or by both
21 that fine and imprisonment, when the moneys, labor, goods,
22 services, or real or personal property taken or obtained is of a value
23 not exceeding nine hundred fifty dollars (\$950).

24 (f) Any person who commits the false imprisonment of an elder
25 or a dependent adult by the use of violence, menace, fraud, or
26 deceit is punishable by imprisonment pursuant to subdivision (h)
27 of Section 1170 for two, three, or four years.

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

30 (h) As used in this section, “dependent adult” means any person
31 who is between the ages of 18 and 64, who has physical or mental
32 limitations which restrict his or her ability to carry out normal
33 activities or to protect his or her rights, including, but not limited
34 to, persons who have physical or developmental disabilities or
35 whose physical or mental abilities have diminished because of
36 age. “Dependent adult” includes any person between the ages of
37 18 and 64 who is admitted as an inpatient to a 24-hour health
38 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
39 Health and Safety Code.

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

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

11 (k) In any case in which a person is convicted of violating these
12 provisions, the court may require him or her to receive appropriate
13 counseling as a condition of probation. Any defendant ordered to
14 be placed in a counseling program shall be responsible for paying
15 the expense of his or her participation in the counseling program
16 as determined by the court. The court shall take into consideration
17 the ability of the defendant to pay, and no defendant shall be denied
18 probation because of his or her inability to pay.

19 SEC. 2. Section 1.5 of this bill incorporates amendments to
20 Section 368 of the Penal Code proposed by both this bill and AB
21 109. It shall only become operative if (1) both bills are enacted
22 and become effective on or before January 1, ~~2011~~ 2012, (2) each
23 bill amends Section 368 of the Penal Code, and (3) this bill is
24 enacted after AB 109, in which case Section 1 of this bill shall not
25 become operative.