

ASSEMBLY BILL

No. 1293

Introduced by Assembly Member Blumenfield

February 18, 2011

An act to amend Section 15656 of, and to add Sections 15656.1, 15656.2, 15656.3, and 15656.4 to, the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1293, as introduced, Blumenfield. Elder abuse: theft or embezzlement: forfeiture.

Existing law provides criminal penalties for any caretaker of an elder or a dependent adult who steals or embezzles the property of the elder or dependent adult.

This bill would authorize the prosecuting agency, as defined, in conjunction with a criminal proceeding alleging theft or embezzlement of property worth \$100,000 or more, to file a petition of forfeiture, as prescribed, with the superior court of the county in which the defendant has been charged with the underlying criminal offense, and alleging that the defendant has acquired the property or proceeds through theft or embezzlement of an elder or dependent adult's property. This bill would also authorize, upon conviction, the prosecuting agency to request restitution in the form of reimbursement for reasonable trial costs. The court, in ordering payment of restitution, would be required to take into account the defendant's ability to pay after the defendant has forfeited the property or proceeds acquired through theft or embezzlement of an elder or dependent adult's property.

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

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

1 SECTION 1. Section 15656 of the Welfare and Institutions
2 Code is amended to read:

3 15656. (a) Any person who knows or reasonably should know
4 that a person is an elder or dependent adult and who, under
5 circumstances or conditions likely to produce great bodily harm
6 or death, willfully causes or permits any elder or dependent adult
7 to suffer, or inflicts unjustifiable physical pain or mental suffering
8 upon him or her, or having the care or custody of any elder or
9 dependent adult, willfully causes or permits the person or health
10 of the elder or dependent adult to be injured, or willfully causes
11 or permits the elder or dependent adult to be placed in a situation
12 such that his or her person or health is endangered, is punishable
13 by imprisonment in the county jail not exceeding one year, or in
14 the state prison for two, three, or four years.

15 (b) Any person who knows or reasonably should know that a
16 person is an elder or dependent adult and who, under circumstances
17 or conditions other than those likely to produce great bodily harm
18 or death, willfully causes or permits any elder or dependent adult
19 to suffer, or inflicts unjustifiable physical pain or mental suffering
20 on him or her, or having the care or custody of any elder or
21 dependent adult, willfully causes or permits the person or health
22 of the elder or dependent adult to be injured or willfully causes or
23 permits the elder or dependent adult to be placed in a situation
24 such that his or her person or health may be endangered, is guilty
25 of a misdemeanor.

26 (c) (1) Any caretaker of an elder or a dependent adult who
27 violates any provision of law prescribing theft or embezzlement,
28 with respect to the property of that elder or dependent adult, is
29 punishable ~~by~~ *as follows*:

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

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

1 (2) *The prosecuting agency may, in conjunction with a criminal*
2 *proceeding alleging theft or embezzlement of assets worth one*
3 *hundred thousand dollars (\$100,000) or more, file a petition of*
4 *forfeiture with the superior court of the county in which the*
5 *defendant has been charged with the underlying criminal offense,*
6 *alleging that the defendant has acquired the property or proceeds*
7 *through theft or embezzlement of an elder or dependent adult's*
8 *property and seeking to have the property or proceeds returned*
9 *to the victim.*

10 (3) *Upon conviction, the prosecuting agency may request*
11 *restitution in the form of reimbursement for reasonable trial costs.*
12 *The court, in ordering payment of restitution, shall take into*
13 *account the defendant's ability to pay after the defendant has*
14 *forfeited the property or proceeds pursuant to paragraph (2) and*
15 *Sections 15656.1 to 15656.4, inclusive.*

16 (d) As used in this section, "caretaker" means any person who
17 has the care, custody, or control of or who stands in a position of
18 trust with, an elder or a dependent adult.

19 (e) As used in this article "prosecuting agency" means the
20 Attorney General or the district attorney of any county.

21 (e)

22 (f) Conduct covered in subdivision (b) of Section 15610.57 shall
23 not be subject to this section.

24 SEC. 2. Section 15656.1 is added to the Welfare and
25 Institutions Code, to read:

26 15656.1. (a) The prosecuting agency, in filing a petition of
27 forfeiture pursuant to paragraph (2) of subdivision (c) of Section
28 15656, shall make service of process of a notice regarding that
29 petition upon every individual who may have a property interest
30 in the alleged proceeds, which notice shall state that any interested
31 party may file a verified claim with the superior court stating the
32 amount of their claimed interest and an affirmation or denial of
33 the prosecuting agency's allegation. If the notices cannot be given
34 by registered mail or personal delivery, the notices shall be
35 published for at least three successive weeks in a newspaper of
36 general circulation in the county where the property is located. If
37 the property alleged to be subject to forfeiture is real property, the
38 prosecuting agency shall, at the time of filing the petition of
39 forfeiture, record a lis pendens in each county in which the real
40 property is situated which specifically identifies the real property

1 alleged to be subject to forfeiture. The judgment of forfeiture shall
2 not affect the interest in real property of any third party which was
3 acquired prior to the recording of the lis pendens.

4 (b) All notices shall set forth the time within which a claim of
5 interest in the property seized is required to be filed pursuant to
6 Section 15656.2.

7 SEC. 3. Section 15656.2 is added to the Welfare and
8 Institutions Code, to read:

9 15656.2. (a) Any person claiming an interest in the property
10 or proceeds, at issue in the forfeiture petition, may, at any time
11 within 30 days from the date of the first publication of the notice
12 of seizure, or within 30 days after receipt of actual notice, file with
13 the superior court of the county in which the action is pending a
14 verified claim stating his or her interest in the property or proceeds.
15 A verified copy of the claim shall be given by the claimant to the
16 Attorney General or district attorney, as appropriate.

17 (b) The defendant may admit or deny that the property is subject
18 to forfeiture pursuant to the provisions of this article. If the
19 defendant fails to admit or deny or to file a claim of interest in the
20 property or proceeds, the court shall enter a response of denial on
21 behalf of the defendant.

22 (c) (1) The forfeiture proceeding shall be set for hearing in the
23 superior court in which the underlying criminal offense will be
24 tried.

25 (2) If the defendant is found guilty of the underlying offense,
26 the issue of forfeiture shall be promptly tried, either before the
27 same jury or before a new jury in the discretion of the court, unless
28 waived by the consent of all parties.

29 (d) At the forfeiture hearing, the prosecuting agency shall have
30 the burden of establishing beyond a reasonable doubt that the
31 property alleged in the petition was acquired by the defendant
32 through theft or embezzlement from an elder or dependent adult.

33 SEC. 4. Section 15656.3 is added to the Welfare and
34 Institutions Code, to read:

35 15656.3. (a) Concurrent with, or subsequent to, the filing of
36 the forfeiture petition, the prosecuting agency may move the
37 superior court for the following pendente lite orders to preserve
38 the status quo of the property alleged in the petition of forfeiture:

1 (1) An injunction to restrain all interested parties and enjoin
2 them from transferring, encumbering, hypothecating, or otherwise
3 disposing of that property.

4 (2) Appointment of a receiver to take possession of, care for,
5 manage, and operate the assets and properties so that such property
6 may be maintained and preserved.

7 (b) No preliminary injunction may be granted or receiver
8 appointed without notice to the interested parties and a hearing to
9 determine that an order is necessary to preserve the property,
10 pending the outcome of the criminal proceedings, and that there
11 is probable cause to believe that the property alleged in the
12 forfeiture proceedings are proceeds or property interests forfeitable
13 under subdivision (c) of Section 15656. However, a temporary
14 restraining order may issue pending that hearing pursuant to the
15 provisions of Section 527 of the Code of Civil Procedure.

16 (c) Notwithstanding any other provision of law, the court in
17 granting these motions may order a surety bond or undertaking to
18 preserve the property interests of the interested parties.

19 (d) The court shall, in making its orders, seek to protect the
20 interests of those who may be involved in the same enterprise as
21 the defendant, but who were not involved in the commission of
22 the theft or embezzlement.

23 SEC. 5. Section 15656.4 is added to the Welfare and
24 Institutions Code, to read:

25 15656.4. (a) If a trier of fact at the forfeiture hearing finds that
26 the alleged property or proceeds is forfeitable pursuant to
27 subdivision (c) of Section 15656 and subdivision (d) of Section
28 15656.2, the court shall declare that property or proceeds forfeited
29 and order the property or proceeds be returned to the elder or
30 dependent adult from whom it was stolen or embezzled.

31 (b) A bona fide or innocent purchasers of the stolen or
32 embezzled property of the elder or dependent adult shall be ordered
33 by the court to return the property or proceeds to the elder or
34 dependent adult, and that bona fide or innocent purchaser shall
35 have the right to bring an action against the defendant to recover
36 his or her interest in the property or proceeds.