

AMENDED IN SENATE JUNE 28, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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, An act to add Section 186.12 to the Penal Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1293, as amended, Blumenfield. Elder abuse: theft or embezzlement: ~~forfeiture.~~ *restitution.*

Existing law provides criminal penalties for any ~~caretaker of an elder or a dependent adult~~ *person who steals or embezzles commits a crime involving theft, embezzlement, forgery, fraud, or identify theft, with respect to the property or personal information of the elder or dependent adult, as specified.*

This bill would authorize the prosecuting agency, as defined, in conjunction with a criminal proceeding alleging theft or embezzlement of property *of an elder or dependant adult* 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~~ *for preservation of property of the defendant for purposes of restitution to the victim, as specified.*

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 186.12 is added to the Penal Code, to
2 read:

3 186.12. (a) (1) A felony for purposes of this section means a
4 felony violation of subdivision (d) or (e) of Section 368, or a felony
5 violation of subdivision (c) of Section 15656 of the Welfare and
6 Institutions Code, that involves the taking or loss of more than one
7 hundred thousand dollars (\$100,000).

8 (2) If a person is charged with a felony as described in
9 paragraph (1) and an allegation as to the existence of those facts
10 has been made, any property that is in the control of that person,
11 and any property that has been transferred by that person to a
12 third party, subsequent to the commission of any criminal act
13 alleged pursuant to this subdivision, other than in a bona fide
14 purchase, whether found within or outside the state, may be
15 preserved by the superior court in order to pay restitution imposed
16 pursuant to this section. Upon conviction of the felony, this
17 property may be levied upon by the superior court to pay restitution
18 imposed pursuant to this section.

19 (b) (1) To prevent dissipation or secreting of property, the
20 prosecuting agency may, at the same time as or subsequent to the
21 filing of a complaint or indictment charging a felony subject to
22 this section, file a petition with the criminal division of the superior
23 court of the county in which the accusatory pleading was filed,
24 seeking a temporary restraining order, preliminary injunction, the
25 appointment of a receiver, or any other protective relief necessary
26 to preserve the property. The filing of the petition shall commence
27 a proceeding that shall be pendent to the criminal proceeding and
28 maintained solely to affect the criminal remedies provided for in
29 this section. The proceeding shall not be subject to or governed
30 by the provisions of the Civil Discovery Act as set forth in Title 4
31 (commencing with Section 2016.010) of Part 4 of the Code of Civil
32 Procedure. The petition shall allege that the defendant has been
33 charged with a felony as described in paragraph (1) of subdivision
34 (a) and shall identify that criminal proceeding and the property
35 to be affected by an order issued pursuant to this section.

1 (2) A notice regarding the petition shall be provided, by personal
2 service or registered mail, to every person who may have an
3 interest in the property specified in the petition. Additionally, the
4 notice shall be published for at least three successive weeks in a
5 newspaper of general circulation in the county where the property
6 affected by an order issued pursuant to this section is located. The
7 notice shall state that any interested person may file a verified
8 claim with the superior court stating the nature and amount of
9 their claimed interest. The notice shall set forth the time within
10 which a claim of interest in the protected property is required to
11 be filed.

12 (3) If the property to be preserved is real property, the
13 prosecuting agency shall record, at the time of filing the petition,
14 a *lis pendens* in each county in which the real property is situated
15 which specifically identifies the property by legal description, the
16 name of the owner of record as shown on the latest equalized
17 assessment roll, and the assessor's parcel number.

18 (4) If the property to be preserved are assets under the control
19 of a banking or financial institution, the prosecuting agency, at
20 the time of the filing of the petition, may obtain an order from the
21 court directing the banking or financial institution to immediately
22 disclose the account numbers and value of the assets of the accused
23 held by the banking or financial institution. The prosecuting agency
24 shall file a supplemental petition, specifically identifying which
25 banking or financial institution accounts shall be subject to a
26 temporary restraining order, preliminary injunction, or other
27 protective remedy.

28 (5) Any person claiming an interest in the protected property
29 may, at any time within 30 days from the date of the first
30 publication of the notice of the petition, or within 30 days after
31 receipt of actual notice, file with the superior court of the county
32 in which the action is pending a verified claim stating the nature
33 and amount of his or her interest in the property. A verified copy
34 of the claim shall be served by the claimant on the Attorney
35 General or district attorney, as appropriate.

36 (6) The imposition of restitution pursuant to this section shall
37 be determined by the superior court in which the underlying
38 criminal offense is sentenced. Any judge who is assigned to the
39 criminal division of the superior court in the county where the
40 petition is filed may issue a temporary restraining order in

1 conjunction with, or subsequent to, the filing of an allegation
2 pursuant to this section. Any subsequent hearing on the petition
3 shall also be heard by a judge assigned to the criminal division
4 of the superior court in the county in which the petition is filed.
5 At the time of the filing of an information or indictment in the
6 underlying criminal case, any subsequent hearing on the petition
7 shall be heard by the superior court judge assigned to the
8 underlying criminal case.

9 (c) Concurrent with or subsequent to the filing of the petition
10 pursuant to this section, the prosecuting agency may move the
11 superior court for, and the superior court may issue, the following
12 *pendente lite* orders to preserve the status quo of the property
13 identified in the petition:

14 (1) An injunction to restrain any person from transferring,
15 encumbering, hypothecating, or otherwise disposing of that
16 property.

17 (2) Appointment of a receiver to take possession of, care for,
18 manage, and operate the properties so that the property may be
19 maintained and preserved. The court may order that a receiver
20 appointed pursuant to this section shall be compensated for all
21 reasonable expenditures made or incurred by him or her in
22 connection with the possession, care, management, and operation
23 of any property that is subject to this section.

24 (3) A bond or other undertaking, in lieu of other orders, of a
25 value sufficient to ensure the satisfaction of restitution imposed
26 pursuant to this section.

27 (d) (1) No preliminary injunction may be granted or receiver
28 appointed by the court without notice that meets the requirements
29 of paragraph (2) of subdivision (b) to all known and reasonably
30 ascertainable interested parties and upon a hearing to determine
31 that an order is necessary to preserve the property pending the
32 outcome of the criminal proceedings. A temporary restraining
33 order may be issued by the court, *ex parte*, pending that hearing
34 in conjunction with or subsequent to the filing of the petition upon
35 the application of the prosecuting attorney. The temporary
36 restraining order may be based upon the sworn declaration of a
37 peace officer with personal knowledge of the criminal investigation
38 that establishes probable cause to believe that a felony has taken
39 place and that the amount of restitution established by this section
40 exceeds or equals the worth of the property subject to the

1 *temporary restraining order. The declaration may include the*
2 *hearsay statements of witnesses to establish the necessary facts.*
3 *The temporary restraining order may be issued without notice*
4 *upon a showing of good cause to the court.*

5 (2) *The defendant, or a person who has filed a verified claim*
6 *as provided in paragraph (5) of subdivision (b), shall have the*
7 *right to have the court conduct an order to show cause hearing*
8 *within 10 days of the service of the request for hearing upon the*
9 *prosecuting agency, in order to determine whether the temporary*
10 *restraining order should remain in effect, whether relief should*
11 *be granted from any lis pendens recorded pursuant to paragraph*
12 *(3) of subdivision (b), or whether any existing order should be*
13 *modified in the interests of justice. Upon a showing of good cause,*
14 *the hearing shall be held within two days of the service of the*
15 *request for hearing upon the prosecuting agency.*

16 (3) *In determining whether to issue a preliminary injunction or*
17 *temporary restraining order in a proceeding brought by a*
18 *prosecuting agency in conjunction with or subsequent to the filing*
19 *of an allegation pursuant to this section, the court has the*
20 *discretion to consider any matter that it deems reliable and*
21 *appropriate, including hearsay statements, in order to reach a just*
22 *and equitable decision. The court shall weigh the relative degree*
23 *of certainty of the outcome on the merits and the consequences to*
24 *each of the parties of granting the interim relief. If the prosecution*
25 *is likely to prevail on the merits and the risk of dissipation of the*
26 *property outweighs the potential harm to the defendants and the*
27 *interested parties, the court shall grant injunctive relief. The court*
28 *shall give significant weight to the following factors:*

29 (A) *The public interest in preserving the property pendente lite.*

30 (B) *The difficulty of preserving the property pendente lite where*
31 *the underlying alleged crimes involve issues of fraud and moral*
32 *turpitude.*

33 (C) *The fact that the requested relief is being sought by a public*
34 *prosecutor on behalf of alleged victims of elder or dependent adult*
35 *financial abuse.*

36 (D) *The likelihood that substantial public harm has occurred*
37 *where a felony is alleged to have been committed.*

38 (E) *The significant public interest involved in compensating the*
39 *elder or dependent adult victim of financial abuse and paying*
40 *court-imposed restitution.*

1 (4) *The court, in making its orders, may consider a defendant's*
2 *request for the release of a portion of the property affected by this*
3 *section in order to pay reasonable legal fees in connection with*
4 *the criminal proceeding, any necessary and appropriate living*
5 *expenses pending trial and sentencing, and for the purpose of*
6 *posting bail. The court shall weigh the needs of the public to retain*
7 *the property against the needs of the defendant to a portion of the*
8 *property. The court shall consider the factors listed in paragraph*
9 *(3) prior to making any order releasing property for these*
10 *purposes.*

11 (5) *The court, in making its orders, shall seek to protect the*
12 *interests of any innocent third persons, including an innocent*
13 *spouse, who were not involved in the commission of any criminal*
14 *activity.*

15 (6) *Any petition filed pursuant to this section shall be part of*
16 *the criminal proceedings for purposes of appointment of counsel*
17 *and shall be assigned to the criminal division of the superior court*
18 *of the county in which the accusatory pleading was filed.*

19 (7) *Based upon a noticed motion brought by the receiver*
20 *appointed pursuant to paragraph (2) of subdivision (c), the court*
21 *may order an interlocutory sale of property identified in the petition*
22 *when the property is liable to perish, to waste, or to be significantly*
23 *reduced in value, or when the expenses of maintaining the property*
24 *are disproportionate to the value thereof. The proceeds of the*
25 *interlocutory sale shall be deposited with the court or as directed*
26 *by the court pending determination of the proceeding pursuant to*
27 *this section.*

28 (8) *The court may make any orders that are necessary to*
29 *preserve the continuing viability of any lawful business enterprise*
30 *that is affected by the issuance of a temporary restraining order*
31 *or preliminary injunction issued pursuant to this action.*

32 (9) *In making its orders, the court shall seek to prevent any*
33 *property subject to a temporary restraining order or preliminary*
34 *injunction from perishing, spoiling, going to waste, or otherwise*
35 *being significantly reduced in value. Where the potential for*
36 *diminution in value exists, the court shall appoint a receiver to*
37 *dispose of or otherwise protect the value of the property.*

38 (10) *A preservation order shall not be issued against any assets*
39 *of a business that are not likely to be dissipated and that may be*
40 *subject to levy or attachment to meet the purposes of this section.*

1 (e) *If the allegation that the defendant committed a felony subject*
2 *to this section is dismissed or found by the trier of fact to be untrue,*
3 *any preliminary injunction or temporary restraining order issued*
4 *pursuant to this section shall be dissolved. If a jury is the trier of*
5 *fact, and the jury is unable to reach a unanimous verdict, the court*
6 *shall have the discretion to continue or dissolve all or a portion*
7 *of the preliminary injunction or temporary restraining order based*
8 *upon the interests of justice. However, if the prosecuting agency*
9 *elects not to retry the case, any preliminary injunction or*
10 *temporary restraining order issued pursuant to this section shall*
11 *be dissolved.*

12 (f) (1) (A) *If the defendant is convicted of a felony subject to*
13 *this section, the trial judge shall continue the preliminary*
14 *injunction or temporary restraining order until the date of the*
15 *criminal sentencing and shall make a finding at that time as to*
16 *what portion, if any, of the property subject to the preliminary*
17 *injunction or temporary restraining order shall be levied upon to*
18 *pay restitution to victims of the crime. The order imposing*
19 *restitution may exceed the total worth of the property subjected to*
20 *the preliminary injunction or temporary restraining order. The*
21 *court may order the immediate transfer of the property to satisfy*
22 *any judgment and sentence made pursuant to this section.*
23 *Additionally, upon motion of the prosecution, the court may enter*
24 *an order as part of the judgment and sentence making the order*
25 *imposing restitution pursuant to this section enforceable pursuant*
26 *to Title 9 (commencing with Section 680.010) of Part 2 of the Code*
27 *of Civil Procedure.*

28 (B) *Additionally, the court shall order the defendant to make*
29 *full restitution to the victim or to make restitution to the victim*
30 *based on his or her ability to pay, as defined in subdivision (b) of*
31 *Section 1203.1b. The payment of the restitution ordered by the*
32 *court pursuant to this section shall be made a condition of any*
33 *probation granted by the court. Notwithstanding any other*
34 *provision of law, the court may order that the period of probation*
35 *continue for up to 10 years or until full restitution is made to the*
36 *victim, whichever is earlier.*

37 (C) *The sentencing court shall retain jurisdiction to enforce the*
38 *order to pay additional restitution and, in appropriate cases, may*
39 *initiate probation violation proceedings or contempt of court*

1 *proceedings against a defendant who is found to have willfully*
2 *failed to comply with any lawful order of the court.*

3 *(D) If the execution of judgment is stayed pending an appeal of*
4 *an order of the superior court pursuant to this section, the*
5 *preliminary injunction or temporary restraining order shall be*
6 *maintained in full force and effect during the pendency of the*
7 *appellate period.*

8 *(2) The order imposing restitution shall not affect the interest*
9 *in real property of any third party that was acquired prior to the*
10 *recording of the lis pendens, unless the property was obtained*
11 *from the defendant other than as a bona fide purchaser for value.*
12 *If any assets or property affected by this section are subject to a*
13 *valid lien, mortgage, security interest, or interest under a*
14 *conditional sales contract and the amount due to the holder of the*
15 *lien, mortgage, interest, or contract is less than the appraised*
16 *value of the property, that person may pay to the state or the local*
17 *government that initiated the proceeding the amount of the*
18 *difference between the appraised value of the property and the*
19 *amount of the lien, mortgage, security interest, or interest under*
20 *a conditional sales contract. Upon that payment, the state or local*
21 *entity shall relinquish all claims to the property. If the holder of*
22 *the interest elects not to make that payment to the state or local*
23 *governmental entity, the interest in the property shall be deemed*
24 *transferred to the state or local governmental entity and any indicia*
25 *of ownership of the property shall be confirmed in the state or*
26 *local governmental entity. The appraised value shall be determined*
27 *as of the date judgment is entered either by agreement between*
28 *the holder of the lien, mortgage, security interest, or interest under*
29 *a conditional sales contract and the governmental entity involved,*
30 *or if they cannot agree, then by a court-appointed appraiser for*
31 *the county in which the action is brought. A person holding a valid*
32 *lien, mortgage, security interest, or interest under a conditional*
33 *sales contract shall be paid the appraised value of his or her*
34 *interest.*

35 *(3) In making its final order, the court shall seek to protect the*
36 *legitimately acquired interests of any innocent third persons,*
37 *including an innocent spouse, who were not involved in the*
38 *commission of any criminal activity.*

39 *(g) In all cases where property is to be levied upon pursuant to*
40 *this section, a receiver appointed by the court shall be empowered*

1 to liquidate all property, the proceeds of which shall be distributed
2 in the following order of priority:

3 (1) To the receiver, or court-appointed appraiser, for all
4 reasonable expenditures made or incurred by him or her in
5 connection with the sale or liquidation of the property, including
6 all reasonable expenditures for any necessary repairs, storage, or
7 transportation of any property levied upon under this section.

8 (2) To any holder of a valid lien, mortgage, or security interest
9 up to the amount of his or her interest in the property or proceeds.

10 (3) To any victim as restitution for any fraudulent or unlawful
11 acts alleged in the accusatory pleading that were proven by the
12 prosecuting agency as part of the pattern of fraudulent or unlawful
13 acts.

14 (h) Unless otherwise expressly provided, the remedies or
15 penalties provided by this section are cumulative to each other
16 and to the remedies or penalties available under all other laws of
17 this state, except that two separate actions against the same
18 defendant and pertaining to the same fraudulent or unlawful acts
19 may not be brought by a district attorney or the Attorney General
20 pursuant to this section and Chapter 5 (commencing with Section
21 17200) of Part 2 of Division 7 of the Business and Professions
22 Code.

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

25 ~~15656. (a) Any person who knows or reasonably should know~~
26 ~~that a person is an elder or dependent adult and who, under~~
27 ~~circumstances or conditions likely to produce great bodily harm~~
28 ~~or death, willfully causes or permits any elder or dependent adult~~
29 ~~to suffer, or inflicts unjustifiable physical pain or mental suffering~~
30 ~~upon him or her, or having the care or custody of any elder or~~
31 ~~dependent adult, willfully causes or permits the person or health~~
32 ~~of the elder or dependent adult to be injured, or willfully causes~~
33 ~~or permits the elder or dependent adult to be placed in a situation~~
34 ~~such that his or her person or health is endangered, is punishable~~
35 ~~by imprisonment in the county jail not exceeding one year, or in~~
36 ~~the state prison for two, three, or four years.~~

37 ~~(b) Any person who knows or reasonably should know that a~~
38 ~~person is an elder or dependent adult and who, under circumstances~~
39 ~~or conditions other than those likely to produce great bodily harm~~
40 ~~or death, willfully causes or permits any elder or dependent adult~~

1 to suffer, or inflicts unjustifiable physical pain or mental suffering
2 on him or her, or having the care or custody of any elder or
3 dependent adult, willfully causes or permits the person or health
4 of the elder or dependent adult to be injured or willfully causes or
5 permits the elder or dependent adult to be placed in a situation
6 such that his or her person or health may be endangered, is guilty
7 of a misdemeanor.

8 (e) (1) Any caretaker of an elder or a dependent adult who
9 violates any provision of law prescribing theft or embezzlement,
10 with respect to the property of that elder or dependent adult, is
11 punishable as follows:

12 (A) By imprisonment in the county jail not exceeding one year,
13 or in the state prison for two, three, or four years when the money,
14 labor, or real or personal property taken is of a value exceeding
15 nine hundred fifty dollars (\$950).

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

21 (2) The prosecuting agency may, in conjunction with a criminal
22 proceeding alleging theft or embezzlement of assets worth one
23 hundred thousand dollars (\$100,000) or more, file a petition of
24 forfeiture with the superior court of the county in which the
25 defendant has been charged with the underlying criminal offense,
26 alleging that the defendant has acquired the property or proceeds
27 through theft or embezzlement of an elder or dependent adult's
28 property and seeking to have the property or proceeds returned to
29 the victim.

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

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

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

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

39 15656.1. (a) The prosecuting agency, in filing a petition of
40 forfeiture pursuant to paragraph (2) of subdivision (e) of Section

1 ~~15656, shall make service of process of a notice regarding that~~
2 ~~petition upon every individual who may have a property interest~~
3 ~~in the alleged proceeds, which notice shall state that any interested~~
4 ~~party may file a verified claim with the superior court stating the~~
5 ~~amount of their claimed interest and an affirmation or denial of~~
6 ~~the prosecuting agency's allegation. If the notices cannot be given~~
7 ~~by registered mail or personal delivery, the notices shall be~~
8 ~~published for at least three successive weeks in a newspaper of~~
9 ~~general circulation in the county where the property is located. If~~
10 ~~the property alleged to be subject to forfeiture is real property, the~~
11 ~~prosecuting agency shall, at the time of filing the petition of~~
12 ~~forfeiture, record a lis pendens in each county in which the real~~
13 ~~property is situated which specifically identifies the real property~~
14 ~~alleged to be subject to forfeiture. The judgment of forfeiture shall~~
15 ~~not affect the interest in real property of any third party which was~~
16 ~~acquired prior to the recording of the lis pendens.~~

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

20 ~~SEC. 3. Section 15656.2 is added to the Welfare and~~
21 ~~Institutions Code, to read:~~

22 ~~15656.2. (a) Any person claiming an interest in the property~~
23 ~~or proceeds, at issue in the forfeiture petition, may, at any time~~
24 ~~within 30 days from the date of the first publication of the notice~~
25 ~~of seizure, or within 30 days after receipt of actual notice, file with~~
26 ~~the superior court of the county in which the action is pending a~~
27 ~~verified claim stating his or her interest in the property or proceeds.~~
28 ~~A verified copy of the claim shall be given by the claimant to the~~
29 ~~Attorney General or district attorney, as appropriate.~~

30 ~~(b) The defendant may admit or deny that the property is subject~~
31 ~~to forfeiture pursuant to the provisions of this article. If the~~
32 ~~defendant fails to admit or deny or to file a claim of interest in the~~
33 ~~property or proceeds, the court shall enter a response of denial on~~
34 ~~behalf of the defendant.~~

35 ~~(c) (1) The forfeiture proceeding shall be set for hearing in the~~
36 ~~superior court in which the underlying criminal offense will be~~
37 ~~tried.~~

38 ~~(2) If the defendant is found guilty of the underlying offense,~~
39 ~~the issue of forfeiture shall be promptly tried, either before the~~

1 same jury or before a new jury in the discretion of the court, unless
2 waived by the consent of all parties.

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

7 ~~SEC. 4. Section 15656.3 is added to the Welfare and
8 Institutions Code, to read:~~

9 ~~15656.3. (a) Concurrent with, or subsequent to, the filing of
10 the forfeiture petition, the prosecuting agency may move the
11 superior court for the following pendente lite orders to preserve
12 the status quo of the property alleged in the petition of forfeiture:~~

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

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

19 ~~(b) No preliminary injunction may be granted or receiver
20 appointed without notice to the interested parties and a hearing to
21 determine that an order is necessary to preserve the property,
22 pending the outcome of the criminal proceedings, and that there
23 is probable cause to believe that the property alleged in the
24 forfeiture proceedings are proceeds or property interests forfeitable
25 under subdivision (c) of Section 15656. However, a temporary
26 restraining order may issue pending that hearing pursuant to the
27 provisions of Section 527 of the Code of Civil Procedure.~~

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

31 ~~(d) The court shall, in making its orders, seek to protect the
32 interests of those who may be involved in the same enterprise as
33 the defendant, but who were not involved in the commission of
34 the theft or embezzlement.~~

35 ~~SEC. 5. Section 15656.4 is added to the Welfare and
36 Institutions Code, to read:~~

37 ~~15656.4. (a) If a trier of fact at the forfeiture hearing finds that
38 the alleged property or proceeds is forfeitable pursuant to
39 subdivision (c) of Section 15656 and subdivision (d) of Section
40 15656.2, the court shall declare that property or proceeds forfeited~~

1 and order the property or proceeds be returned to the elder or
2 dependent adult from whom it was stolen or embezzled.
3 (b) A bona fide or innocent purchasers of the stolen or
4 embezzled property of the elder or dependent adult shall be ordered
5 by the court to return the property or proceeds to the elder or
6 dependent adult, and that bona fide or innocent purchaser shall
7 have the right to bring an action against the defendant to recover
8 his or her interest in the property or proceeds.

O