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

LEGISLATIVE COUNSEL’S DIGEST

AB 2459, as introduced, Conway. Elder abuse.
Under existing law, a person who is a caretaker of an elder or dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or specified identify theft provisions of law, is subject to 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 make technical, nonsubstantive changes to that provision.

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

SECTION 1. Section 368 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

(c) Any 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 or permits any elder
or dependent adult to suffer, or inflicts thereon unjustifiable
physical pain or mental suffering, or having the care or custody
of any elder or dependent adult, willfully causes or permits the
person or health of the elder or dependent adult to be injured or
willfully causes or permits the elder or dependent adult to be placed
in a situation in which his or her person or health may be
endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

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

(1) By a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, 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 exceeding nine hundred fifty dollars ($950).

(2) By a fine not exceeding one thousand dollars ($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 nine hundred fifty dollars ($950).

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

(1) By a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, 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 exceeding nine hundred fifty dollars ($950).

(2) By a fine not exceeding one thousand dollars ($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 nine hundred fifty dollars ($950).

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

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

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

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

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

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