

**ASSEMBLY BILL**

**No. 1382**

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**Introduced by Assembly Member Achadjian**

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1382, as introduced, Achadjian. Elder abuse.

Existing law makes it a crime for a person who knows or reasonably should know that a person is an elder or dependent adult to willfully cause or permit the person or health of the elder or dependent adult to be injured, or willfully cause or permit the elder or dependent adult to be placed in a situation in which his or her person or health is endangered. Existing law specifies penalties for a person who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or specified identify theft provisions of law when the victim is an elder or a dependent adult.

This bill would make technical, nonsubstantive changes to these provisions.

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

1 minor children, because elders and dependent adults may be  
2 confused, on various medications, mentally or physically impaired,  
3 or incompetent, and therefore less able to protect themselves, to  
4 understand or report criminal conduct, or to testify in court  
5 proceedings on their own behalf.

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

20 (2) If, in the commission of an offense described in paragraph  
21 (1), the victim suffers great bodily injury, as defined in Section  
22 12022.7, the defendant shall receive an additional term in the state  
23 prison as follows:

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

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

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

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

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

32 (c) ~~Any~~A person who knows or reasonably should know that  
33 a person is an elder or dependent adult and who, under  
34 circumstances or conditions other than those likely to produce  
35 great bodily harm or death, willfully causes or permits ~~any~~ an elder  
36 or dependent adult to suffer, or inflicts thereon unjustifiable  
37 physical pain or mental suffering, or, having the care or custody  
38 of ~~any~~ an elder or dependent adult, willfully causes or permits the  
39 person or health of the elder or dependent adult to be injured or  
40 willfully causes or permits the elder or dependent adult to be placed

1 in a situation in which his or her person or health may be  
2 endangered, is guilty of a misdemeanor. A second or subsequent  
3 violation of this subdivision is punishable by a fine not to exceed  
4 two thousand dollars (\$2,000), or by imprisonment in a county jail  
5 not to exceed one year, or by both that fine and imprisonment.

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

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

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

26 (e) ~~Any~~A caretaker of an elder or a dependent adult who violates  
27 any provision of law proscribing theft, embezzlement, forgery, or  
28 fraud, or who violates Section 530.5 proscribing identity theft,  
29 with respect to the property or personal identifying information of  
30 that elder or 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  
35 pursuant to subdivision (h) of Section 1170 for two, three, or four  
36 years, or by both that fine and imprisonment, when the moneys,  
37 labor, goods, services, or real or personal property taken or obtained  
38 is of a value exceeding 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 (f) ~~Any~~A person who commits the false imprisonment of an  
5 elder or a dependent adult by the use of violence, menace, fraud,  
6 or deceit is punishable by imprisonment pursuant to subdivision  
7 (h) of Section 1170 for two, three, or four years.

8 (g) As used in this section, “elder” means ~~any~~ a person who is  
9 65 years of age or older.

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

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

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

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

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