

ASSEMBLY BILL

No. 1718

Introduced by Assembly Member Kim

January 27, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1718, as introduced, Kim. Elder abuse.

Existing law makes it a crime for a person who is not a caretaker to violate specified laws proscribing theft, embezzlement, fraud, or identity theft with respect to the property or identifying information of an elder or dependent adult, knowing that he or she is an elder or dependent adult. Existing law makes a violation of that provision punishable as a misdemeanor or a felony in county jail, as prescribed, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950.

This bill would instead make a violation of that provision punishable as a misdemeanor in county jail or as a felony in state prison, as prescribed.

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 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

1 and protection, not unlike the special protections provided for
2 minor children, because elders and dependent adults may be
3 confused, on various medications, mentally or physically impaired,
4 or incompetent, and therefore less able to protect themselves, to
5 understand or report criminal conduct, or to testify in court
6 proceedings on their own behalf.

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

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

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

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

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

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

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

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

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

7 (d) Any person who is not a caretaker who violates any provision
8 of law proscribing theft, embezzlement, forgery, or fraud, or who
9 violates Section 530.5 proscribing identity theft, with respect to
10 the property or personal identifying information of an elder or a
11 dependent adult, and who knows or reasonably should know that
12 the victim is an elder or a dependent adult, is punishable 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~~ *in the state prison* for
18 two, three, or four years, or by both that fine and imprisonment,
19 when the moneys, labor, goods, services, or real or personal
20 property taken or obtained is of a value exceeding nine hundred
21 fifty dollars (\$950).

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

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

32 (1) By a fine not exceeding two thousand five hundred dollars
33 (\$2,500), or by imprisonment in a county jail not exceeding one
34 year, or by both that fine and imprisonment, or by a fine not
35 exceeding ten thousand dollars (\$10,000), or by imprisonment
36 pursuant to subdivision (h) of Section 1170 for two, three, or four
37 years, or by both that fine and imprisonment, when the moneys,
38 labor, goods, services, or real or personal property taken or obtained
39 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 (f) Any person who commits the false imprisonment of an elder
7 or a dependent adult by the use of violence, menace, fraud, or
8 deceit is punishable by imprisonment pursuant to subdivision (h)
9 of Section 1170 for two, three, or four years.
- 10 (g) As used in this section, “elder” means any person who is 65
11 years of age or older.
- 12 (h) As used in this section, “dependent adult” means any person
13 who is between the ages of 18 and 64, who has physical or mental
14 limitations which restrict his or her ability to carry out normal
15 activities or to protect his or her rights, including, but not limited
16 to, persons who have physical or developmental disabilities or
17 whose physical or mental abilities have diminished because of
18 age. “Dependent adult” includes any person between the ages of
19 18 and 64 who is admitted as an inpatient to a 24-hour health
20 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
21 Health and Safety Code.
- 22 (i) As used in this section, “caretaker” means any person who
23 has the care, custody, or control of, or who stands in a position of
24 trust with, an elder or a dependent adult.
- 25 (j) Nothing in this section shall preclude prosecution under both
26 this section and Section 187 or 12022.7 or any other provision of
27 law. However, a person shall not receive an additional term of
28 imprisonment under both paragraphs (2) and (3) of subdivision
29 (b) for any single offense, nor shall a person receive an additional
30 term of imprisonment under both Section 12022.7 and paragraph
31 (2) or (3) of subdivision (b) for any single offense.
- 32 (k) In any case in which a person is convicted of violating these
33 provisions, the court may require him or her to receive appropriate
34 counseling as a condition of probation. Any defendant ordered to
35 be placed in a counseling program shall be responsible for paying
36 the expense of his or her participation in the counseling program
37 as determined by the court. The court shall take into consideration
38 the ability of the defendant to pay, and no defendant shall be denied
39 probation because of his or her inability to pay.

1 *(l)* Upon conviction for a violation of subdivision (b), (c), (d),
2 (e), or (f), the sentencing court shall also consider issuing an order
3 restraining the defendant from any contact with the victim, which
4 may be valid for up to 10 years, as determined by the court. It is
5 the intent of the Legislature that the length of any restraining order
6 be based upon the seriousness of the facts before the court, the
7 probability of future violations, and the safety of the victim and
8 his or her immediate family. This protective order may be issued
9 by the court whether the defendant is sentenced to state prison or
10 county jail, or if imposition of sentence is suspended and the
11 defendant is placed on probation.

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