

AMENDED IN ASSEMBLY FEBRUARY 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1718**

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**Introduced by Assembly Member Kim**

January 27, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1718, as amended, Kim. Elder abuse.

Existing law makes it a crime for ~~a person who is not a caretaker~~ *any person* to violate specified laws proscribing theft, embezzlement, *forgery*, 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~~ *those provisions* 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~~ *those provisions* 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:

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

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

23 (2) If, in the commission of an offense described in paragraph  
24 (1), the victim suffers great bodily injury, as defined in Section  
25 12022.7, the defendant shall receive an additional term in the state  
26 prison as follows:

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

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

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

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

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

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

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

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

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

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

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

33 (1) By a fine not exceeding two thousand five hundred dollars  
34 (\$2,500), or by imprisonment in a county jail not exceeding one  
35 year, or by both that fine and imprisonment, or by a fine not  
36 exceeding ten thousand dollars (\$10,000), or by imprisonment  
37 pursuant to subdivision (h) of Section 1170 in the state prison for  
38 two, three, or four years, or by both that fine and imprisonment,  
39 when the moneys, labor, goods, services, or real or personal

1 property taken or obtained is of a value exceeding nine hundred  
2 fifty dollars (\$950).

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

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

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

14 (h) As used in this section, “dependent adult” means any person  
15 who is between the ages of 18 and 64, who has physical or mental  
16 limitations which restrict his or her ability to carry out normal  
17 activities or to protect his or her rights, including, but not limited  
18 to, persons who have physical or developmental disabilities or  
19 whose physical or mental abilities have diminished because of  
20 age. “Dependent adult” includes any person between the ages of  
21 18 and 64 who is admitted as an inpatient to a 24-hour health  
22 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the  
23 Health and Safety Code.

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

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

34 (k) In any case in which a person is convicted of violating these  
35 provisions, the court may require him or her to receive appropriate  
36 counseling as a condition of probation. Any defendant ordered to  
37 be placed in a counseling program shall be responsible for paying  
38 the expense of his or her participation in the counseling program  
39 as determined by the court. The court shall take into consideration

1 the ability of the defendant to pay, and no defendant shall be denied  
2 probation because of his or her inability to pay.

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

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