

**Introduced by Senator Morrell**  
(Coauthor: Assembly Member Waldron)

February 23, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 338, as introduced, Morrell. Elder abuse.

Existing law provides that a person who knows or reasonably should know that the victim is an elder or dependent adult, and under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits the victim to suffer unjustifiable physical pain or mental suffering, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed \$6,000, or by both that fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 4 years.

This bill would provide that a person who knows or reasonably should know that the victim is an elder or dependent adult, and under circumstances or conditions likely to produce significant or substantial mental suffering, willfully causes or permits the victim to suffer unjustifiable mental suffering, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed \$6,000, or by both that fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 4 years.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

*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  
 6 minor children, because elders and dependent adults may be  
 7 confused, on various medications, mentally or physically impaired,  
 8 or incompetent, and therefore less able to protect themselves, to  
 9 understand or report criminal conduct, or to testify in court  
 10 proceedings on their own behalf.

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

25 (B) *A person who knows or reasonably should know that a*  
 26 *person is an elder or dependent adult and who, under*  
 27 *circumstances or conditions likely to produce significant or*  
 28 *substantial mental suffering, willfully causes or permits an elder*  
 29 *or dependent adult to suffer, or inflicts thereon unjustifiable mental*  
 30 *suffering, is punishable by imprisonment in a county jail not*  
 31 *exceeding one year, or by a fine not to exceed six thousand dollars*  
 32 *(\$6,000), or by both that fine and imprisonment, or by*  
 33 *imprisonment in the state prison for two, three, or four years.*

1 (2) If in the commission of an offense described in paragraph  
2 (1), the victim suffers great bodily injury, as defined in Section  
3 12022.7, the defendant shall receive an additional term in the state  
4 prison as follows:

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

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

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

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

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

13 (c) ~~Any~~A person who knows or reasonably should know that  
14 a person is an elder or dependent adult and who, under  
15 circumstances or conditions other than those likely to produce  
16 great bodily harm or death, *or likely to produce significant or*  
17 *substantial mental suffering*, willfully causes or permits ~~any~~ an  
18 elder or dependent adult to suffer, or inflicts thereon unjustifiable  
19 physical pain or mental suffering, or having the care or custody  
20 of ~~any~~ an elder or dependent adult, willfully causes or permits the  
21 person or health of the elder or dependent adult to be injured or  
22 willfully causes or permits the elder or dependent adult to be placed  
23 in a situation in which his or her person or health may be  
24 endangered, is guilty of a misdemeanor. A second or subsequent  
25 violation of this subdivision is punishable by a fine not to exceed  
26 two thousand dollars (\$2,000), or by imprisonment in a county jail  
27 not to exceed one year, or by both that fine and imprisonment.

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

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

1 labor, goods, services, or real or personal property taken or obtained  
2 is of a value exceeding nine hundred 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 (e) ~~Any~~A caretaker of an elder or a dependent adult who violates  
9 ~~any~~ a provision of law proscribing theft, embezzlement, forgery,  
10 or fraud, or who violates Section 530.5 proscribing identity theft,  
11 with respect to the property or personal identifying information of  
12 that elder or 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 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 (f) ~~Any~~A person who commits the false imprisonment of an  
27 elder or a dependent adult by the use of violence, menace, fraud,  
28 or deceit is punishable by imprisonment pursuant to subdivision  
29 (h) of Section 1170 for two, three, or four years.

30 (g) As used in this section, “elder” means ~~any~~ a person who is  
31 65 years of age or older.

32 (h) As used in this section, “dependent adult” means ~~any~~ a  
33 person who is between ~~the ages of 18 and 64~~, *64 years of age* who  
34 has physical or mental limitations which restrict his or her ability  
35 to carry out normal activities or to protect his or her rights,  
36 including, but not limited to, persons who have physical or  
37 developmental disabilities or whose physical or mental abilities  
38 have diminished because of age. “Dependent adult” includes ~~any~~  
39 a person between ~~the ages of 18 and 64 years of age~~ who is

1 admitted as an inpatient to a 24-hour health facility, as defined in  
2 Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

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

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

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

22 SEC. 2. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 the only costs that may be incurred by a local agency or school  
25 district will be incurred because this act creates a new crime or  
26 infraction, eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section 17556 of  
28 the Government Code, or changes the definition of a crime within  
29 the meaning of Section 6 of Article XIII B of the California  
30 Constitution.