

Introduced by Senator BlockFebruary 24, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 352, as introduced, Block. 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 dependent adult. Existing law makes a crime to falsely imprison an elder or dependent adult by the use of violence, menace, fraud, or deceit.

This bill would require a sentencing court, upon a person's conviction for violating these provisions, to consider issuing an order restraining the defendant from any contact with the victim, whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation, which may be valid for up to 10 years, as determined by the court. By expanding the scope of the crime of violating a protective order, this bill would impose a state-mandated 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 person who knows or reasonably should know that
12 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 elder or dependent adult
15 to suffer, or inflicts thereon unjustifiable physical pain or mental
16 suffering, or having the care or custody of any elder or dependent
17 adult, willfully causes or permits the person or health of the elder
18 or dependent adult to be injured, or willfully causes or permits the
19 elder or dependent adult to be placed in a situation in which his or
20 her person or health is endangered, is punishable by imprisonment
21 in a county jail not exceeding one year, or by a fine not to exceed
22 six thousand dollars (\$6,000), or by both that fine and
23 imprisonment, or by imprisonment in the state prison for two,
24 three, or four years.

25 (2) If in the commission of an offense described in paragraph
26 (1), the victim suffers great bodily injury, as defined in Section
27 12022.7, the defendant shall receive an additional term in the state
28 prison as follows:

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

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

31 (3) If in the commission of an offense described in paragraph
32 (1), the defendant proximately causes the death of the victim, the

1 defendant shall receive an additional term in the state prison as
2 follows:

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

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

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

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

25 (1) By a fine not exceeding two thousand five hundred dollars
26 (\$2,500), or by imprisonment in a county jail not exceeding one
27 year, or by both that fine and imprisonment, or by a fine not
28 exceeding ten thousand dollars (\$10,000), or by imprisonment
29 pursuant to subdivision (h) of Section 1170 for two, three, or four
30 years, or by both that fine and imprisonment, when the moneys,
31 labor, goods, services, or real or personal property taken or obtained
32 is of a value exceeding nine hundred fifty dollars (\$950).

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

38 (e) Any caretaker of an elder or a dependent adult who violates
39 any provision of law proscribing theft, embezzlement, forgery, or
40 fraud, or who violates Section 530.5 proscribing identity theft,

1 with respect to the property or personal identifying information of
2 that elder or dependent adult, is punishable as follows:

3 (1) By a fine not exceeding two thousand five hundred dollars
4 (\$2,500), or by imprisonment in a county jail not exceeding one
5 year, or by both that fine and imprisonment, or by a fine not
6 exceeding ten thousand dollars (\$10,000), or by imprisonment
7 pursuant to subdivision (h) of Section 1170 for two, three, or four
8 years, or by both that fine and imprisonment, when the moneys,
9 labor, goods, services, or real or personal property taken or obtained
10 is of a value exceeding nine hundred fifty dollars (\$950).

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

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

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

22 (h) As used in this section, “dependent adult” means any person
23 who is between the ages of 18 and 64, who has physical or mental
24 limitations which restrict his or her ability to carry out normal
25 activities or to protect his or her rights, including, but not limited
26 to, persons who have physical or developmental disabilities or
27 whose physical or mental abilities have diminished because of
28 age. “Dependent adult” includes any person between the ages of
29 18 and 64 who is admitted as an inpatient to a 24-hour health
30 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
31 Health and Safety Code.

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

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

1 term of imprisonment under both Section 12022.7 and paragraph
2 (2) or (3) of subdivision (b) for any single offense.

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

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

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.