

Introduced by Senator Block

February 24, 2015

An act to amend ~~Section 368~~ *Sections 166 and 368* of the Penal Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 352, as amended, 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 *it* 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 *local* program.

This bill would also make a conforming change.

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 166 of the Penal Code is amended to
 2 read:

3 166. (a) Except as provided in subdivisions (b), (c), and (d),
 4 a person guilty of any of the following contempts of court is guilty
 5 of a misdemeanor:

6 (1) Disorderly, contemptuous, or insolent behavior committed
 7 during the sitting of a court of justice, in the immediate view and
 8 presence of the court, and directly tending to interrupt its
 9 proceedings or to impair the respect due to its authority.

10 (2) Behavior specified in paragraph (1) that is committed in the
 11 presence of a referee, while actually engaged in a trial or hearing,
 12 pursuant to the order of a court, or in the presence of any jury while
 13 actually sitting for the trial of a cause, or upon an inquest or other
 14 proceeding authorized by law.

15 (3) A breach of the peace, noise, or other disturbance directly
 16 tending to interrupt the proceedings of the court.

17 (4) Willful disobedience of the terms as written of any process
 18 or court order or out-of-state court order, lawfully issued by a
 19 court, including orders pending trial.

20 (5) Resistance willfully offered by any person to the lawful
 21 order or process of a court.

22 (6) The contumacious and unlawful refusal of a person to be
 23 sworn as a witness or, when so sworn, the like refusal to answer
 24 a material question.

25 (7) The publication of a false or grossly inaccurate report of the
 26 proceedings of a court.

27 (8) Presenting to a court having power to pass sentence upon a
 28 prisoner under conviction, or to a member of the court, an affidavit,
 29 testimony, or representation of any kind, verbal or written, in

1 aggravation or mitigation of the punishment to be imposed upon
2 the prisoner, except as provided in this code.

3 (9) Willful disobedience of the terms of an injunction that
4 restrains the activities of a criminal street gang or any of its
5 members, lawfully issued by a court, including an order pending
6 trial.

7 (b) (1) A person who is guilty of contempt of court under
8 paragraph (4) of subdivision (a) by willfully contacting a victim
9 by telephone or mail, or directly, and who has been previously
10 convicted of a violation of Section 646.9 shall be punished by
11 imprisonment in a county jail for not more than one year, by a fine
12 of five thousand dollars (\$5,000), or by both that fine and
13 imprisonment.

14 (2) For the purposes of sentencing under this subdivision, each
15 contact shall constitute a separate violation of this subdivision.

16 (3) The present incarceration of a person who makes contact
17 with a victim in violation of paragraph (1) is not a defense to a
18 violation of this subdivision.

19 (c) (1) Notwithstanding paragraph (4) of subdivision (a), a
20 willful and knowing violation of a protective order or stay-away
21 court order described as follows shall constitute contempt of court,
22 a misdemeanor, punishable by imprisonment in a county jail for
23 not more than one year, by a fine of not more than one thousand
24 dollars (\$1,000), or by both that imprisonment and fine:

25 (A) An order issued pursuant to Section 136.2.

26 (B) An order issued pursuant to paragraph (2) of subdivision
27 (a) of Section 1203.097.

28 (C) An order issued ~~as a condition of probation~~ after a conviction
29 in a criminal proceeding involving elder or dependent adult abuse,
30 as defined in Section 368.

31 (D) An order issued pursuant to Section 1201.3.

32 (E) An order described in paragraph (3).

33 (2) If a violation of paragraph (1) results in a physical injury,
34 the person shall be imprisoned in a county jail for at least 48 hours,
35 whether a fine or imprisonment is imposed, or the sentence is
36 suspended.

37 (3) Paragraphs (1) and (2) apply to the following court orders:

38 (A) An order issued pursuant to Section 6320 or 6389 of the
39 Family Code.

1 (B) An order excluding one party from the family dwelling or
2 from the dwelling of the other.

3 (C) An order enjoining a party from specified behavior that the
4 court determined was necessary to effectuate the orders described
5 in paragraph (1).

6 (4) A second or subsequent conviction for a violation of an order
7 described in paragraph (1) occurring within seven years of a prior
8 conviction for a violation of any of those orders and involving an
9 act of violence or “a credible threat” of violence, as provided in
10 subdivision (c) of Section 139, is punishable by imprisonment in
11 a county jail not to exceed one year, or in the state prison for 16
12 months or two or three years.

13 (5) The prosecuting agency of each county shall have the
14 primary responsibility for the enforcement of the orders described
15 in paragraph (1).

16 (d) (1) A person who owns, possesses, purchases, or receives
17 a firearm knowing he or she is prohibited from doing so by the
18 provisions of a protective order as defined in Section 136.2 of this
19 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
20 of the Code of Civil Procedure, shall be punished under Section
21 29825.

22 (2) A person subject to a protective order described in paragraph
23 (1) shall not be prosecuted under this section for owning,
24 possessing, purchasing, or receiving a firearm to the extent that
25 firearm is granted an exemption pursuant to subdivision (h) of
26 Section 6389 of the Family Code.

27 (e) (1) If probation is granted upon conviction of a violation of
28 subdivision (c), the court shall impose probation consistent with
29 Section 1203.097.

30 (2) If probation is granted upon conviction of a violation of
31 subdivision (c), the conditions of probation may include, in lieu
32 of a fine, one or both of the following requirements:

33 (A) That the defendant make payments to a battered women’s
34 shelter, up to a maximum of one thousand dollars (\$1,000).

35 (B) That the defendant provide restitution to reimburse the
36 victim for reasonable costs of counseling and other reasonable
37 expenses that the court finds are the direct result of the defendant’s
38 offense.

39 (3) For an order to pay a fine, make payments to a battered
40 women’s shelter, or pay restitution as a condition of probation

1 under this subdivision or subdivision (c), the court shall make a
2 determination of the defendant's ability to pay. In no event shall
3 an order to make payments to a battered women's shelter be made
4 if it would impair the ability of the defendant to pay direct
5 restitution to the victim or court-ordered child support.

6 (4) If the injury to a married person is caused in whole, or in
7 part, by the criminal acts of his or her spouse in violation of
8 subdivision (c), the community property shall not be used to
9 discharge the liability of the offending spouse for restitution to the
10 injured spouse required by Section 1203.04, as operative on or
11 before August 2, 1995, or Section 1202.4, or to a shelter for costs
12 with regard to the injured spouse and dependents required by this
13 subdivision, until all separate property of the offending spouse is
14 exhausted.

15 (5) A person violating an order described in subdivision (c) may
16 be punished for any substantive offenses described under Section
17 136.1 or 646.9. A finding of contempt shall not be a bar to
18 prosecution for a violation of Section 136.1 or 646.9. However, a
19 person held in contempt for a violation of subdivision (c) shall be
20 entitled to credit for any punishment imposed as a result of that
21 violation against any sentence imposed upon conviction of an
22 offense described in Section 136.1 or 646.9. A conviction or
23 acquittal for a substantive offense under Section 136.1 or 646.9
24 shall be a bar to a subsequent punishment for contempt arising out
25 of the same act.

26 **SECTION 1.**

27 *SEC. 2.* Section 368 of the Penal Code is amended to read:

28 368. (a) The Legislature finds and declares that crimes against
29 elders and dependent adults are deserving of special consideration
30 and protection, not unlike the special protections provided for
31 minor children, because elders and dependent adults may be
32 confused, on various medications, mentally or physically impaired,
33 or incompetent, and therefore less able to protect themselves, to
34 understand or report criminal conduct, or to testify in court
35 proceedings on their own behalf.

36 (b) (1) Any person who knows or reasonably should know that
37 a person is an elder or dependent adult and who, under
38 circumstances or conditions likely to produce great bodily harm
39 or death, willfully causes or permits any elder or dependent adult
40 to suffer, or inflicts thereon unjustifiable physical pain or mental

1 suffering, or having the care or custody of any elder or dependent
2 adult, willfully causes or permits the person or health of the elder
3 or dependent adult to be injured, or willfully causes or permits the
4 elder or dependent adult to be placed in a situation in which his or
5 her person or health is endangered, is punishable by imprisonment
6 in a county jail not exceeding one year, or by a fine not to exceed
7 six thousand dollars (\$6,000), or by both that fine and
8 imprisonment, or by imprisonment in the state prison for two,
9 three, or four years.

10 (2) ~~If~~, in the commission of an offense described in paragraph
11 (1), the victim suffers great bodily injury, as defined in Section
12 12022.7, the defendant shall receive an additional term in the state
13 prison as follows:

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

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

16 (3) ~~If~~, in the commission of an offense described in paragraph
17 (1), the defendant proximately causes the death of the victim, the
18 defendant shall receive an additional term in the state prison as
19 follows:

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

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

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

36 (d) Any person who is not a caretaker who violates any provision
37 of law proscribing theft, embezzlement, forgery, or fraud, or who
38 violates Section 530.5 proscribing identity theft, with respect to
39 the property or personal identifying information of an elder or a

1 dependent adult, and who knows or reasonably should know that
2 the victim is an elder or a 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 (e) Any caretaker of an elder or a dependent adult who violates
17 any provision of law proscribing theft, embezzlement, forgery, or
18 fraud, or who violates Section 530.5 proscribing identity theft,
19 with respect to the property or personal identifying information of
20 that elder or dependent adult, is punishable as follows:

21 (1) By a fine not exceeding two thousand five hundred dollars
22 (\$2,500), or by imprisonment in a county jail not exceeding one
23 year, or by both that fine and imprisonment, or by a fine not
24 exceeding ten thousand dollars (\$10,000), or by imprisonment
25 pursuant to subdivision (h) of Section 1170 for two, three, or four
26 years, or by both that fine and imprisonment, when the moneys,
27 labor, goods, services, or real or personal property taken or obtained
28 is of a value exceeding nine hundred fifty dollars (\$950).

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

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

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

1 (h) As used in this section, “dependent adult” means any person
2 who is between the ages of 18 and 64, who has physical or mental
3 limitations which restrict his or her ability to carry out normal
4 activities or to protect his or her rights, including, but not limited
5 to, persons who have physical or developmental disabilities or
6 whose physical or mental abilities have diminished because of
7 age. “Dependent adult” includes any person between the ages of
8 18 and 64 who is admitted as an inpatient to a 24-hour health
9 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
10 Health and Safety Code.

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

14 (j) Nothing in this section shall preclude prosecution under both
15 this section and Section 187 or 12022.7 or any other provision of
16 law. However, a person shall not receive an additional term of
17 imprisonment under both paragraphs (2) and (3) of subdivision
18 (b) for any single offense, nor shall a person receive an additional
19 term of imprisonment under both Section 12022.7 and paragraph
20 (2) or (3) of subdivision (b) for any single offense.

21 (k) In any case in which a person is convicted of violating these
22 provisions, the court may require him or her to receive appropriate
23 counseling as a condition of probation. Any defendant ordered to
24 be placed in a counseling program shall be responsible for paying
25 the expense of his or her participation in the counseling program
26 as determined by the court. The court shall take into consideration
27 the ability of the defendant to pay, and no defendant shall be denied
28 probation because of his or her inability to pay.

29 (l) Upon conviction for a violation of subdivision (b), (c), (d),
30 (e), or (f), the sentencing court shall also consider issuing an order
31 restraining the defendant from any contact with the victim, which
32 may be valid for up to 10 years, as determined by the court. It is
33 the intent of the Legislature that the length of any restraining order
34 be based upon the seriousness of the facts before the court, the
35 probability of future violations, and the safety of the victim and
36 his or her immediate family. This protective order may be issued
37 by the court whether the defendant is sentenced to state prison or
38 county jail, or if imposition of sentence is suspended and the
39 defendant is placed on probation.

1 ~~SEC. 2.~~

2 *SEC. 3.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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