

AMENDED IN ASSEMBLY JANUARY 5, 1998

AMENDED IN ASSEMBLY AUGUST 25, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 880

Introduced by Assembly Member Hertzberg

February 27, 1997

An act to amend Section ~~13700~~ of the Penal Code, relating to ~~minors~~ 368 of the Penal Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 880, as amended, Hertzberg. ~~Domestic violence: minors~~ Elder abuse.

Existing law provides that every law enforcement agency in this state shall develop written policies and standards for police officers' responses to domestic violence calls, punishes domestic violence as a crime, and defines domestic violence to include abuse committed against an adult or a fully emancipated minor, as specified.

This bill would revise the definition of domestic violence to include any minor who is abused as specified. By expanding the definition of a crime, this bill would impose a state-mandated local program.

Under existing law, any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement with respect to the property of that elder or dependent adult, is required to be punished by imprisonment in the county jail, or in the state prison for 2, 3,

or 4 years when the money, labor, or real or personal property taken is of a value exceeding \$400, and by fine not exceeding \$1,000 or by imprisonment in the county jail, or both, when the money, labor, or real or personal property taken is of a value not exceeding \$400.

This bill would delete the definition of caretaker and apply this prohibition to all persons who commit theft or embezzlement with respect to the property of an elder or dependent adult. Because this bill would expand the scope of an existing crime by making the crime applicable to a broader category of persons, it would impose a state-mandated local program.

This bill would also make technical, nonsubstantive changes.

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 13700 of the Penal Code is~~
2 ~~amended to read:~~
3 ~~13700. As used in this title:~~
4 ~~(a) "Abuse" means intentionally or recklessly causing~~
5 ~~or attempting to cause bodily injury, or placing another~~
6 ~~person in reasonable apprehension of imminent serious~~
7 ~~bodily injury to himself or herself, or another.~~
8 ~~(b) "Domestic violence" means abuse committed~~
9 ~~against an adult or minor who is a spouse, former spouse,~~
10 ~~cohabitant, former cohabitant, or person with whom the~~
11 ~~suspect has had a child or is having or has had a dating or~~
12 ~~engagement relationship. For purposes of this~~
13 ~~subdivision, "cohabitant" means two unrelated adult~~
14 ~~persons living together for a substantial period of time,~~
15 ~~resulting in some permanency of relationship. Factors~~



1 ~~that may determine whether persons are cohabiting~~
2 ~~include, but are not limited to, (1) sexual relations~~
3 ~~between the parties while sharing the same living~~
4 ~~quarters, (2) sharing of income or expenses, (3) joint use~~
5 ~~or ownership of property, (4) whether the parties hold~~
6 ~~themselves out as husband and wife, (5) the continuity of~~
7 ~~the relationship, and (6) the length of the relationship.~~

8 ~~(c) "Officer" means any officer or employee of a local~~
9 ~~police department or sheriff's office, and any peace~~
10 ~~officer of the Department of the California Highway~~
11 ~~Patrol, the Department of Parks and Recreation, the~~
12 ~~University of California Police Department, or the~~
13 ~~California State University and College Police~~
14 ~~Departments, as defined in Section 830.2, or a housing~~
15 ~~authority patrol officer, as defined in subdivision (d) of~~
16 ~~Section 830.31.~~

17 ~~(d) "Victim" means a person who is a victim of~~
18 ~~domestic violence.~~

19 *SECTION 1. Section 368 of the Penal Code is*
20 *amended to read:*

21 368. (a) (1) Any person who, under circumstances
22 or conditions likely to produce great bodily harm or
23 death, willfully causes or permits any elder or dependent
24 adult, with knowledge that he or she is an elder or a
25 dependent adult, to suffer, or inflicts thereon
26 unjustifiable physical pain or mental suffering, or having
27 the care or custody of any elder or dependent adult,
28 willfully causes or permits the person or health of the
29 elder or dependent adult to be injured, or willfully causes
30 or permits the elder or dependent adult to be placed in
31 a situation in which his or her person or health is
32 endangered, ~~is punishable~~ *shall be punished* by
33 imprisonment in ~~the~~ a county jail not exceeding one year,
34 or in the state prison for two, three, or four years.

35 (2) If in the commission of an offense described in
36 paragraph (1), the victim suffers great bodily injury, as
37 defined in subdivision (e) of Section 12022.7, the
38 defendant shall receive an additional term of three years
39 in the state prison, except that if the victim is 70 years of
40 age or older the additional term shall be five years.



1 (3) If in the commission of an offense described in
2 paragraph (1), the defendant proximately causes the
3 death of the victim, the defendant shall receive an
4 additional term of five years in the state prison, except
5 that if the victim is 70 years of age or older the additional
6 term shall be seven years.

7 (b) Any person who, under circumstances or
8 conditions other than those likely to produce great bodily
9 harm or death, willfully causes or permits any elder or
10 dependent adult, with knowledge that he or she is an
11 elder or a dependent adult, to suffer, or inflicts thereon
12 unjustifiable physical pain or mental suffering, or having
13 the care or custody of any elder or dependent adult,
14 willfully causes or permits the person or health of the
15 elder or dependent adult to be injured or willfully causes
16 or permits the elder or dependent adult to be placed in
17 a situation in which his or her person or health may be
18 endangered, is guilty of a misdemeanor.

19 (c) Any ~~caretaker of an elder or a dependent adult~~
20 *person* who violates any provision of law proscribing theft
21 or embezzlement, with respect to the property of that
22 elder or dependent adult, ~~is punishable~~ *shall be punished*
23 by imprisonment in a county jail not exceeding one year,
24 or in the state prison for two, three, or four years when the
25 money, labor, or real or personal property taken is of a
26 value exceeding four hundred dollars (\$400), and by a
27 fine not exceeding one thousand dollars (\$1,000), by
28 imprisonment in a county jail not exceeding one year, or
29 by both that fine and imprisonment, when the money,
30 labor, or real or personal property taken is of a value not
31 exceeding four hundred dollars (\$400).

32 (d) As used in this section, “elder” means any person
33 who is 65 years of age or older.

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



1 “Dependent adult” includes any person between the
2 ages of 18 and 64 who is admitted as an inpatient to a
3 24-hour health facility, as defined in Sections 1250, 1250.2,
4 and 1250.3 of the Health and Safety Code.

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

9 ~~(g)~~ Nothing in this section shall preclude prosecution
10 under both this section and Section 187 or 12022.7 or any
11 other provision of law. However, a person shall not
12 receive an additional term of imprisonment under both
13 paragraphs (2) and (3) of subdivision (a) for any single
14 offense, nor shall a person receive an additional term of
15 imprisonment under both Section 12022.7 and paragraph
16 (2) or (3) of subdivision (a) for any single offense.

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

27 Notwithstanding Section 17580 of the Government
28 Code, unless otherwise specified, the provisions of this act
29 shall become operative on the same date that the act
30 takes effect pursuant to the California Constitution.

