

AMENDED IN ASSEMBLY JUNE 17, 1998

AMENDED IN SENATE APRIL 28, 1998

AMENDED IN SENATE APRIL 20, 1998

AMENDED IN SENATE APRIL 13, 1998

**SENATE BILL**

**No. 1715**

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**Introduced by Senator Calderon**

February 17, 1998

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An act to amend Sections 237 and 368 of the Penal Code, to amend Section 2583 of, to amend the heading of Part 7 (commencing with Section 250) of Division 2 of, and to add Section 259 to, the Probate Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1715, as amended, Calderon. Elder and dependent adult abuse.

(1) Under existing law, the offense of false imprisonment is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

This bill would make false imprisonment punishable by imprisonment in the state prison for 2, 3, or 4 years, where that offense is committed upon an elder or dependent adult by the use of force, menace, fraud, or deceit. By increasing the punishment of a crime, this bill would impose a state-mandated local program.

(2) Existing law provides for the distribution of an estate upon the death of a person owning real or personal property,

or both, where the deceased has been the victim of a homicide.

This bill would deem a person to predecease an elder or dependent adult who was victimized by that person, barring that person from receiving any property, damages, or costs from the estate of the deceased elder or dependent adult, under specified conditions. Those conditions require that the person was either convicted of any of specified acts of abuse against an elder or dependent adult, as specified, or found liable ~~in a civil action~~ for having (a) abused the elder or dependent adult, as specified, (b) acted in bad faith, and (c) been reckless, oppressive, fraudulent, or malicious in the commission of the abusive acts. In addition, the bill would require that the decedent be found to have been substantially unable to manage his or her financial resources or to resist fraud or undue influence.

(3) Existing law authorizes judicial proceedings under which a conservator may be appointed to manage the property and financial affairs of a person. The court is required to consider the relevant circumstances in determining whether to authorize a proposed action in connection with the conservatee's property, including circumstances enumerated in existing law.

This bill would add as a specific circumstance for the court's consideration in this context whether there are allegations that a beneficiary of the conservatee has committed physical abuse, neglect, false imprisonment, or fiduciary abuse against the conservatee under certain conditions.

(4) 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 237 of the Penal Code is  
2 amended to read:

3 237. (a) False imprisonment is punishable by a fine  
4 not exceeding one thousand dollars (\$1,000), or by  
5 imprisonment in the county jail for not more than one  
6 year, or by both that fine and imprisonment. If the false  
7 imprisonment be effected by violence, menace, fraud, or  
8 deceit, it shall be punishable by imprisonment in the state  
9 prison.

10 (b) False imprisonment of an elder or dependent  
11 adult by use of violence, menace, fraud, or deceit shall be  
12 punishable as described in subdivision (e) of Section 368.

13 SEC. 2. Section 368 of the Penal Code is amended to  
14 read:

15 368. (a) The Legislature finds and declares that  
16 crimes against elders and dependent adults are deserving  
17 of special consideration and protection, not unlike the  
18 special protections provided for minor children, because  
19 elders and dependent adults may be confused, on various  
20 medications, mentally or physically impaired, or  
21 incompetent, and therefore less able to protect  
22 themselves, to understand or report criminal conduct, or  
23 to testify in court proceedings on their own behalf.

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

37 (2) If in the commission of an offense described in  
38 paragraph (1), the victim suffers great bodily injury, as



1 defined in subdivision (e) of Section 12022.7, the  
2 defendant shall receive an additional term of three years  
3 in the state prison, except that if the victim is 70 years of  
4 age or older the additional term shall be five years.

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

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

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

36 (e) Any person who commits the false imprisonment  
37 of an elder or dependent adult by the use of violence,  
38 menace, fraud, or deceit is punishable by imprisonment  
39 in the state prison for two, three, or four years.



1 (f) As used in this section, “elder” means any person  
2 who is 65 years of age or older.

3 (g) As used in this section, “dependent adult” means  
4 any person who is between the ages of 18 and 64, who has  
5 physical or mental limitations which restrict his or her  
6 ability to carry out normal activities or to protect his or  
7 her rights, including, but not limited to, persons who have  
8 physical or developmental disabilities or whose physical  
9 or mental abilities have diminished because of age.  
10 “Dependent adult” includes any person between the  
11 ages of 18 and 64 who is admitted as an inpatient to a  
12 24-hour health facility, as defined in Sections 1250, 1250.2,  
13 and 1250.3 of the Health and Safety Code.

14 (h) As used in this section, “caretaker” means any  
15 person who has the care, custody, or control of or who  
16 stands in a position of trust with, an elder or a dependent  
17 adult.

18 (i) Nothing in this section shall preclude prosecution  
19 under both this section and Section 187 or 12022.7 or any  
20 other provision of law. However, a person shall not  
21 receive an additional term of imprisonment under both  
22 paragraphs (2) and (3) of subdivision (a) for any single  
23 offense, nor shall a person receive an additional term of  
24 imprisonment under both Section 12022.7 and paragraph  
25 (2) or (3) of subdivision (a) for any single offense.

26 SEC. 3. The heading of Part 7 (commencing with  
27 Section 250) of Division 2 of the Probate Code is amended  
28 to read:

29

30 PART 7. EFFECT OF HOMICIDE OR ABUSE OF  
31 AN ELDER OR DEPENDENT ADULT

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33 SEC. 4. Section 259 is added to the Probate Code, to  
34 read:

35 259. (a) Any person shall be deemed to have  
36 predeceased a decedent to the extent provided in  
37 subdivision (c) where all of the following apply:

38 (1) It has been proven by clear and convincing  
39 evidence ~~in a separate civil action~~ that the person is liable



1 for physical abuse, neglect, or fiduciary abuse of the  
2 decedent, who was an elder or dependent adult.

3 (2) The person is found to have acted in bad faith.

4 (3) The person has been found to have been reckless,  
5 oppressive, fraudulent, or malicious in the commission of  
6 any of these acts upon the decedent.

7 (4) The decedent, at the time those acts occurred and  
8 thereafter until the time of his or her death, has been  
9 found to have been substantially unable to manage his or  
10 her financial resources or to resist fraud or undue  
11 influence.

12 (b) Any person shall be deemed to have predeceased  
13 a decedent to the extent provided in subdivision (c) if  
14 that person has been convicted of a violation of Section  
15 236 of the Penal Code or any offense described in Section  
16 368 of the Penal Code.

17 (c) Any person found liable under subdivision (a) or  
18 convicted under subdivision (b) shall not (1) receive any  
19 property, damages, or costs that are awarded to the  
20 decedent's estate in an action described in subdivision (a)  
21 or (b), whether that person's entitlement is under a will,  
22 a trust, or the laws of intestacy; or (2) serve as a fiduciary  
23 as defined in Section 39, if the instrument nominating or  
24 appointing that person was executed during the period  
25 when the decedent was substantially unable to manage  
26 his or her financial resources or resist fraud or undue  
27 influence.

28 (d) For purposes of this section, the following  
29 definitions shall apply:

30 (1) Physical abuse as defined in Section 15610.63 of the  
31 Welfare and Institutions Code.

32 (2) Neglect as defined in Section 15610.57 of the  
33 Welfare and Institutions Code.

34 (3) False imprisonment as defined in Section 368 of the  
35 Penal Code.

36 (4) Fiduciary abuse as defined in Section 15610.30 of  
37 the Welfare and Institutions Code.

38 (e) *Nothing in this section shall be construed to*  
39 *prohibit the severance and transfer of an action or*



1 *proceeding to a separate civil action pursuant to Section*  
2 *801.*

3 SEC. 5. Section 2583 of the Probate Code is amended  
4 to read:

5 2583. In determining whether to authorize or require  
6 a proposed action under this article, the court shall take  
7 into consideration all the relevant circumstances, which  
8 may include, but are not limited to, the following:

9 (a) Whether the conservatee has legal capacity for the  
10 proposed transaction and, if not, the probability of the  
11 conservatee's recovery of legal capacity.

12 (b) The past donative declarations, practices, and  
13 conduct of the conservatee.

14 (c) The traits of the conservatee.

15 (d) The relationship and intimacy of the prospective  
16 donees with the conservatee, their standards of living,  
17 and the extent to which they would be natural objects of  
18 the conservatee's bounty by any objective test based on  
19 such relationship, intimacy, and standards of living.

20 (e) The wishes of the conservatee.

21 (f) Any known estate plan of the conservatee  
22 (including, but not limited to, the conservatee's will, any  
23 trust of which the conservatee is the settlor or beneficiary,  
24 any power of appointment created by or exercisable by  
25 the conservatee, and any contract, transfer, or joint  
26 ownership arrangement with provisions for payment or  
27 transfer of benefits or interests at the conservatee's death  
28 to another or others which the conservatee may have  
29 originated).

30 (g) The manner in which the estate would devolve  
31 upon the conservatee's death, giving consideration to the  
32 age and the mental and physical condition of the  
33 conservatee, the prospective devisees or heirs of the  
34 conservatee, and the prospective donees.

35 (h) The value, liquidity, and productiveness of the  
36 estate.

37 (i) The minimization of current or prospective  
38 income, estate, inheritance, or other taxes or expenses of  
39 administration.



1 (j) Changes of tax laws and other laws which would  
2 likely have motivated the conservatee to alter the  
3 conservatee’s estate plan.

4 (k) The likelihood from all the circumstances that the  
5 conservatee as a reasonably prudent person would take  
6 the proposed action if the conservatee had the capacity  
7 to do so.

8 (l) Whether any beneficiary is a person described in  
9 paragraph (1) of subdivision (b) of Section 21350.

10 (m) Whether ~~there are allegations that~~ a beneficiary  
11 has committed physical abuse, neglect, false  
12 imprisonment, or fiduciary abuse against the conservatee  
13 after the conservatee was substantially unable to manage  
14 his or her financial resources or resist fraud or undue  
15 influence, and the conservatee’s disability persisted  
16 throughout the time of the hearing on the proposed  
17 substituted judgment.

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

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

