

AMENDED IN ASSEMBLY AUGUST 24, 1998

AMENDED IN ASSEMBLY AUGUST 21, 1998

AMENDED IN ASSEMBLY JULY 7, 1998

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

Introduced by Senator Calderon
(Coauthor: Assembly Member Washington)

February 17, 1998

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 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. This provision would not apply to a dependent who, at any time following the prohibited act or acts, was substantially able to manage his or her financial resources and to resist fraud or undue influence as defined.

(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.

(5) This bill would incorporate additional changes in Section 368 of the Penal Code proposed by SB 2168, AB 880, and AB 1955, to be operative if this bill and one or more of the other bills are enacted and become effective on or before January 1, 1999, and this bill is enacted last.

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,



1 with knowledge that he or she is an elder or a dependent
2 adult, to suffer, or inflicts thereon unjustifiable physical
3 pain or mental suffering, or having the care or custody of
4 any elder or dependent adult, willfully causes or permits
5 the person or health of the elder or dependent adult to be
6 injured, or willfully causes or permits the elder or
7 dependent adult to be placed in a situation in which his
8 or her person or health is endangered, is punishable by
9 imprisonment in the county jail not exceeding one year,
10 or in the state prison for two, three, or four years.

11 (2) If in the commission of an offense described in
12 paragraph (1), the victim suffers great bodily injury, as
13 defined in subdivision (e) of Section 12022.7, the
14 defendant shall receive an additional term of three years
15 in the state prison, except that if the victim is 70 years of
16 age or older the additional term shall be five years.

17 (3) If in the commission of an offense described in
18 paragraph (1), the defendant proximately causes the
19 death of the victim, the defendant shall receive an
20 additional term of five years in the state prison, except
21 that if the victim is 70 years of age or older the additional
22 term shall be seven years.

23 (c) Any person who, under circumstances or
24 conditions other than those likely to produce great bodily
25 harm or death, willfully causes or permits any elder or
26 dependent adult, with knowledge that he or she is an
27 elder or a dependent adult, to suffer, or inflicts thereon
28 unjustifiable physical pain or mental suffering, or having
29 the care or custody of any elder or dependent adult,
30 willfully causes or permits the person or health of the
31 elder or dependent adult to be injured or willfully causes
32 or permits the elder or dependent adult to be placed in
33 a situation in which his or her person or health may be
34 endangered, is guilty of a misdemeanor.

35 (d) Any caretaker of an elder or a dependent adult
36 who violates any provision of law proscribing theft or
37 embezzlement, with respect to the property of that elder
38 or dependent adult, is punishable by imprisonment in a
39 county jail not exceeding one year, or in the state prison
40 for two, three, or four years when the money, labor, or



1 real or personal property taken is of a value exceeding
2 four hundred dollars (\$400), and by a fine not exceeding
3 one thousand dollars (\$1,000), by imprisonment in a
4 county jail not exceeding one year, or by both that fine
5 and imprisonment, when the money, labor, or real or
6 personal property taken is of a value not exceeding four
7 hundred dollars (\$400).

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

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

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

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

29 (i) Nothing in this section shall preclude prosecution
30 under both this section and Section 187 or 12022.7 or any
31 other provision of law. However, a person shall not
32 receive an additional term of imprisonment under both
33 paragraphs (2) and (3) of subdivision (a) for any single
34 offense, nor shall a person receive an additional term of
35 imprisonment under both Section 12022.7 and paragraph
36 (2) or (3) of subdivision (a) for any single offense.

37 *SEC. 2.1. Section 368 of the Penal Code is amended to*
38 *read:*

39 368. (a) *The Legislature finds and declares that*
40 *crimes against elders and dependent adults are deserving*



1 of special consideration and protection, not unlike the
 2 special protections provided for minor children, because
 3 elders and dependent adults may be confused, on various
 4 medications, mentally or physically impaired, or
 5 incompetent, and therefore less able to protect
 6 themselves, to understand or report criminal conduct, or
 7 to testify in court proceedings on their own behalf.

8 (b) (1) Any person who, under circumstances or
 9 conditions likely to produce great bodily harm or death,
 10 willfully causes or permits any elder or dependent adult,
 11 with knowledge that he or she is an elder or a dependent
 12 adult, to suffer, or inflicts thereon unjustifiable physical
 13 pain or mental suffering, or having the care or custody of
 14 any elder or dependent adult, willfully causes or permits
 15 the person or health of the elder or dependent adult to be
 16 injured, or willfully causes or permits the elder or
 17 dependent adult to be placed in a situation in which his
 18 or her person or health is endangered, is punishable by
 19 imprisonment in the county jail not exceeding one year,
 20 or in the state prison for two, three, or four years.

21 (2) If in the commission of an offense described in
 22 paragraph (1), the victim suffers great bodily injury, as
 23 defined in subdivision (e) of Section 12022.7, the
 24 defendant shall receive an additional term ~~of three years~~
 25 ~~in the state prison, except that if the victim is 70 years of~~
 26 ~~age or older the additional term shall be five years as~~
 27 ~~follows:~~

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

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

30 (3) If in the commission of an offense described in
 31 paragraph (1), the defendant proximately causes the
 32 death of the victim, the defendant shall receive an
 33 additional term ~~of five years~~ in the state prison, ~~except~~
 34 ~~that if the victim is 70 years of age or older the additional~~
 35 ~~term shall be seven years as follows:~~

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

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

38 ~~(b)~~

39 (c) Any person who, under circumstances or
 40 conditions other than those likely to produce great bodily



1 harm or death, willfully causes or permits any elder or
2 dependent adult, with knowledge that he or she is an
3 elder or a dependent adult, to suffer, or inflicts thereon
4 unjustifiable physical pain or mental suffering, or having
5 the care or custody of any elder or dependent adult,
6 willfully causes or permits the person or health of the
7 elder or dependent adult to be injured or willfully causes
8 or permits the elder or dependent adult to be placed in
9 a situation in which his or her person or health may be
10 endangered, is guilty of a misdemeanor.

11 ~~(e)~~

12 *(d) Any person who is not a caretaker who violates any*
13 *provision of law proscribing theft or embezzlement, with*
14 *respect to the property of an elder or dependent adult,*
15 *and who knows or reasonably should know that the victim*
16 *is an elder or dependent adult, is punishable by*
17 *imprisonment in a county jail not exceeding one year, or*
18 *in the state prison for two, three, or four years, when the*
19 *money, labor, or real or personal property taken is of a*
20 *value exceeding four hundred dollars (\$400); and by a*
21 *fine not exceeding one thousand dollars (\$1,000), by*
22 *imprisonment in a county jail not exceeding one year, or*
23 *by both that fine and imprisonment, when the money,*
24 *labor, or real or personal property taken is of a value not*
25 *exceeding four hundred dollars (\$400).*

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

39 ~~(d)~~

1 (f) Any person who commits the false imprisonment
2 of an elder or dependent adult by the use of violence,
3 menace, fraud, or deceit is punishable by imprisonment
4 in the state prison for two, three, or four years.

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

7 ~~(e)~~

8 (h) As used in this section, “dependent adult” means
9 any person who is between the ages of 18 and 64, who has
10 physical or mental limitations which restrict his or her
11 ability to carry out normal activities or to protect his or
12 her rights, including, but not limited to, persons who have
13 physical or developmental disabilities or whose physical
14 or mental abilities have diminished because of age.
15 “Dependent adult” includes any person between the
16 ages of 18 and 64 who is admitted as an inpatient to a
17 24-hour health facility, as defined in Sections 1250, 1250.2,
18 and 1250.3 of the Health and Safety Code.

19 ~~(f)~~

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

24 ~~(g)~~

25 (j) Nothing in this section shall preclude prosecution
26 under both this section and Section 187 or 12022.7 or any
27 other provision of law. However, a person shall not
28 receive an additional term of imprisonment under both
29 paragraphs (2) and (3) of subdivision ~~(a)~~ (b) for any
30 single offense, nor shall a person receive an additional
31 term of imprisonment under both Section 12022.7 and
32 paragraph (2) or (3) of subdivision ~~(a)~~ (b) for any single
33 offense.

34 SEC. 2.2. Section 368 of the Penal Code is amended to
35 read:

36 368. (a) The Legislature finds and declares that
37 crimes against elders and dependent adults are deserving
38 of special consideration and protection, not unlike the
39 special protections provided for minor children, because
40 elders and dependent adults may be confused, on various



1 *medications, mentally or physically impaired, or*
2 *incompetent, and therefore less able to protect*
3 *themselves, to understand or report criminal conduct, or*
4 *to testify in court proceedings on their own behalf.*

5 (b) (1) Any person who, under circumstances or
6 conditions likely to produce great bodily harm or death,
7 willfully causes or permits any elder or dependent adult,
8 with knowledge that he or she is an elder or a dependent
9 adult, to suffer, or inflicts thereon unjustifiable physical
10 pain or mental suffering, ~~or having the care or custody of~~
11 ~~any elder or dependent adult, willfully causes or permits~~
12 ~~the person or health of the elder or dependent adult to be~~
13 ~~injured, or willfully causes or permits the elder or~~
14 ~~dependent adult to be placed in a situation in which his~~
15 ~~or her person or health is endangered, is punishable shall~~
16 *be punished* by imprisonment in ~~the~~ a county jail not
17 exceeding one year, or in the state prison for two, three,
18 or four years.

19 (2) If in the commission of an offense described in
20 paragraph (1), the victim suffers great bodily injury, as
21 defined in subdivision (e) of Section 12022.7, the
22 defendant shall receive an additional term ~~of three years~~
23 in the state prison, ~~except that as follows:~~

- 24 (A) *Three years if the victim is under 70 years of age.*
- 25 (B) *Five years if the victim is 70 years of age or older*
26 ~~if the victim is 70 years of age or older the additional term~~
27 ~~shall be five years.~~

28 (3) If in the commission of an offense described in
29 paragraph (1), the defendant proximately causes the
30 death of the victim, the defendant shall receive an
31 additional term ~~of five years~~ in the state prison, ~~except~~
32 ~~that as follows:~~

- 33 (A) *Five years if the victim is under 70 years of age.*
- 34 (B) *Seven years if the victim is 70 years of age or older*
35 ~~the additional term shall be seven years.~~

36 ~~(b)~~
37 (c) Any person who, under circumstances or
38 conditions other than those likely to produce great bodily
39 harm or death, willfully causes or permits any elder or
40 dependent adult, with knowledge that he or she is an



1 elder or a dependent adult, to suffer, or inflicts thereon
2 unjustifiable physical pain or mental suffering, ~~or having~~
3 ~~the care or custody of any elder or dependent adult,~~
4 ~~willfully causes or permits the person or health of the~~
5 ~~elder or dependent adult to be injured or willfully causes~~
6 ~~or permits the elder or dependent adult to be placed in~~
7 ~~a situation in which his or her person or health may be~~
8 ~~endangered,~~ is guilty of a misdemeanor.

9 (e)

10 (d) Any caretaker of an elder or dependent adult,
11 who, under circumstances or conditions likely to produce
12 great bodily harm or death, willfully causes or permits any
13 elder or dependent adult, with knowledge that he or she
14 is an elder or a dependent adult, to be neglected through
15 a failure to prevent malnutrition, provide medical care
16 for physical and mental health needs, assist with personal
17 hygiene, or furnish food, clothing, or shelter or willfully
18 causes or permits the elder or dependent adult to be
19 placed in a situation where his or her person or health is
20 endangered, shall be punished, in addition to any other
21 punishment, by imprisonment in a county jail not
22 exceeding one year, or in the state prison for two, three,
23 or four years.

24 (e) Any caretaker of an elder or dependent adult, who,
25 under circumstances or conditions other than those likely
26 to produce great bodily harm or death, willfully causes or
27 permits any elder or dependent adult, with knowledge
28 that he or she is an elder or dependent adult, to be
29 neglected through a failure to prevent malnutrition,
30 provide medical care for physical and mental health
31 needs, assist with personal hygiene, or furnish food,
32 clothing, or shelter; or willfully causes or permits the
33 elder or dependent to be placed in a situation such that
34 his or her person or health is endangered, is guilty of a
35 misdemeanor.

36 (f) In determining the punishment to be imposed
37 upon a conviction under subdivisions (d) and (e), the
38 court shall consider all relevant facts, including, but not
39 limited to, the following:



1 *(1) Whether the neglect exposed the elder or*
2 *dependent adult to the risk of death or serious physical*
3 *harm.*

4 *(2) Whether the neglect had a direct or immediate*
5 *relationship to the health, safety, or security of the elder*
6 *or dependent adult.*

7 *(3) The presence or absence of good faith efforts by*
8 *the defendant to prevent the neglect.*

9 (g) Any caretaker of an elder or a dependent adult
10 who violates any provision of law proscribing theft or
11 embezzlement, with respect to the property of that elder
12 or dependent adult, is punishable by imprisonment in a
13 county jail not exceeding one year, or in the state prison
14 for two, three, or four years when the money, labor, or
15 real or personal property taken is of a value exceeding
16 four hundred dollars (\$400), and by a fine not exceeding
17 one thousand dollars (\$1,000), by imprisonment in a
18 county jail not exceeding one year, or by both that fine
19 and imprisonment, when the money, labor, or real or
20 personal property taken is of a value not exceeding four
21 hundred dollars (\$400).

22 ~~(d)~~

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

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



1 (j) As used in this section, “neglect” means that a
2 caretaker of an elder or a dependent adult either acted,
3 or failed to act, in a manner which constitutes a reckless,
4 gross, or culpable departure from an ordinary standard of
5 care.

6 (k) As used in subdivisions (d) and (e), “willfully”
7 when applied to the intent with which an act is done or
8 omitted, implies simply a purpose or willingness to
9 commit the act, or failure to act, in a manner which
10 constitutes a reckless, gross, or culpable departure from
11 an ordinary standard of care. It does not require any
12 specific intent to violate any law or to injure another or
13 to acquire any advantage.

14 (l) As used in this section, “elder” means any person
15 who is 65 years of age or older.

16 ~~(e)~~

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

28 ~~(f)~~

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

33 ~~(g)~~

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



1 paragraph (2) or (3) of subdivision ~~(a)~~ (b) for any single
2 offense.

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

6
7 PART 7. EFFECT OF HOMICIDE OR ABUSE OF
8 AN ELDER OR DEPENDENT ADULT
9

10 SEC. 4. Section 259 is added to the Probate Code, to
11 read:

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

15 (1) It has been proven by clear and convincing
16 evidence that the person is liable for physical abuse,
17 neglect, or fiduciary abuse of the decedent, who was an
18 elder or dependent adult.

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

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

23 (4) The decedent, at the time those acts occurred and
24 thereafter until the time of his or her death, has been
25 found to have been substantially unable to manage his or
26 her financial resources or to resist fraud or undue
27 influence.

28 (b) Any person shall be deemed to have predeceased
29 a decedent to the extent provided in subdivision (c) if
30 that person has been convicted of a violation of Section
31 236 of the Penal Code or any offense described in Section
32 368 of the Penal Code.

33 (c) Any person found liable under subdivision (a) or
34 convicted under subdivision (b) shall not (1) receive any
35 property, damages, or costs that are awarded to the
36 decedent's estate in an action described in subdivision (a)
37 or (b), whether that person's entitlement is under a will,
38 a trust, or the laws of intestacy; or (2) serve as a fiduciary
39 as defined in Section 39, if the instrument nominating or
40 appointing that person was executed during the period

1 when the decedent was substantially unable to manage
2 his or her financial resources or resist fraud or undue
3 influence. This section shall not apply to a decedent who,
4 at any time following the act or acts described in
5 paragraph (1) of subdivision (a), or the act or acts
6 described in subdivision (b), was substantially able to
7 manage his or her financial resources and to resist fraud
8 or undue influence within the meaning of subdivision (b)
9 of Section 1801 of the Probate Code and subdivision (b)
10 of Section 39 of the Civil Code.

11 (d) For purposes of this section, the following
12 definitions shall apply:

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

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

17 (3) False imprisonment as defined in Section 368 of the
18 Penal Code.

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

21 (e) Nothing in this section shall be construed to
22 prohibit the severance and transfer of an action or
23 proceeding to a separate civil action pursuant to Section
24 801.

25 SEC. 5. Section 2583 of the Probate Code is amended
26 to read:

27 2583. In determining whether to authorize or require
28 a proposed action under this article, the court shall take
29 into consideration all the relevant circumstances, which
30 may include, but are not limited to, the following:

31 (a) Whether the conservatee has legal capacity for the
32 proposed transaction and, if not, the probability of the
33 conservatee's recovery of legal capacity.

34 (b) The past donative declarations, practices, and
35 conduct of the conservatee.

36 (c) The traits of the conservatee.

37 (d) The relationship and intimacy of the prospective
38 donees with the conservatee, their standards of living,
39 and the extent to which they would be natural objects of



1 the conservatee's bounty by any objective test based on
2 such relationship, intimacy, and standards of living.

3 (e) The wishes of the conservatee.

4 (f) Any known estate plan of the conservatee
5 (including, but not limited to, the conservatee's will, any
6 trust of which the conservatee is the settlor or beneficiary,
7 any power of appointment created by or exercisable by
8 the conservatee, and any contract, transfer, or joint
9 ownership arrangement with provisions for payment or
10 transfer of benefits or interests at the conservatee's death
11 to another or others which the conservatee may have
12 originated).

13 (g) The manner in which the estate would devolve
14 upon the conservatee's death, giving consideration to the
15 age and the mental and physical condition of the
16 conservatee, the prospective devisees or heirs of the
17 conservatee, and the prospective donees.

18 (h) The value, liquidity, and productiveness of the
19 estate.

20 (i) The minimization of current or prospective
21 income, estate, inheritance, or other taxes or expenses of
22 administration.

23 (j) Changes of tax laws and other laws which would
24 likely have motivated the conservatee to alter the
25 conservatee's estate plan.

26 (k) The likelihood from all the circumstances that the
27 conservatee as a reasonably prudent person would take
28 the proposed action if the conservatee had the capacity
29 to do so.

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

32 (m) Whether a beneficiary has committed physical
33 abuse, neglect, false imprisonment, or fiduciary abuse
34 against the conservatee after the conservatee was
35 substantially unable to manage his or her financial
36 resources, or resist fraud or undue influence, and the
37 conservatee's disability persisted throughout the time of
38 the hearing on the proposed substituted judgment.

39 SEC. 6. (a) *Section 2.1 of this bill incorporates*
40 *amendments to Section 368 of the Penal Code proposed*



1 by this bill, SB 2168 and AB 880. It shall only become
2 operative if (1) all three bills are enacted and become
3 effective on or before January 1, 1999, (2) each bill
4 amends Section 368 of the Penal Code, and (3) AB 1955
5 is not enacted or as enacted does not amend that section,
6 and (4) this bill is enacted after SB 2168 and AB 880, in
7 which case Section 368 and of the Penal Code, as
8 amended by SB 2168 shall remain operative only until the
9 operative date of this bill, at which time Section 2.1 of this
10 bill shall become operative, and Sections 2 and 2.2 of this
11 bill shall not become operative.

12 (b) Section 2.2 of this bill incorporates amendments to
13 Section 368 of the Penal Code proposed by this bill, SB
14 2168, AB 880, and AB 1955. It shall only become operative
15 if (1) all four bills are enacted and become effective on
16 or before January 1, 1999, (2) all four bills amend Section
17 368 of the Penal Code, (3) this bill is enacted after all
18 three of the other bills, in which case Section 368 of the
19 Penal Code, as amended by SB 2168 shall remain
20 operative only until the operative date of this bill, at
21 which time Section 2.2 of this bill shall become operative,
22 and Sections 2 and 2.1 of this bill shall not become
23 operative.

24 SEC. 7. No reimbursement is required by this act
25 pursuant to Section 6 of Article XIII B of the California
26 Constitution because the only costs that may be incurred
27 by a local agency or school district will be incurred
28 because this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition
32 of a crime within the meaning of Section 6 of Article
33 XIII B of the California Constitution.

34 Notwithstanding Section 17580 of the Government
35 Code, unless otherwise specified, the provisions of this act
36 shall become operative on the same date that the act
37 takes effect pursuant to the California Constitution.

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