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CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 20

**Introduced by Assembly Member Lieber
(Coauthor: Assembly Member Leno)**

December 2, 2002

An act to amend Sections 710, 765, 767, 1109, 1228, 1253, 1360, and 1380 of, and to add Section 177 to, the Evidence Code, and to amend Sections 288, 368, 502.9, 515, 525, 859.1, 861.5, 868.7, 939.21, 1347.5, 11166, and 13515 of, and to add Section 1127g to, the Penal Code, and to amend Section 15630 of the Welfare and Institutions Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 20, as amended, Lieber. Victims of crime.

(1) Existing law provides that every witness testifying before a court of law take an oath, affirmation, or declaration except that children under 10 years of age may, in the court's discretion, only be required to promise to tell the truth.

This bill would expand this exemption to include dependent persons with a developmental disability or cognitive mental impairment.

(2) Existing law provides that a leading question may be asked of a child witness who is under 10 years of age in specified cases involving prosecution of physical, mental, or sexual abuse.

This bill would expand this provision to provide that leading questions may be asked of a dependent person with a developmental disability or cognitive mental impairment in the same circumstance.

(3) Existing law provides that evidence of a person's character or of a trait of his or her character is inadmissible when offered to prove his or her conduct on a specified occasion with certain exceptions, including when the defendant is accused of an offense involving abuse of an elder or dependent adult.

This bill would provide that this evidence is admissible when the offense involves abuse of a dependent person regardless of age.

(4) Existing law provides that certain statements of a witness are inadmissible in a court because they are hearsay. Existing law provides that for the purpose of establishing the elements of a crime so as to admit as evidence an admission of a defendant charged with certain sex offenses a statement that describes a minor child as a victim of sexual abuse, a statement made by a person who is a minor child under 12 years of age that was included in a written report of a law enforcement or other official or a minor child who is found to be unavailable or who refuses to testify, is not made inadmissible by the hearsay rule.

This bill would provide that a statement describing a dependent person as a victim of sexual abuse, a statement by a dependent person that was included in a written report of a law enforcement or other official or a dependent person who is found to be unavailable or who refuses to testify is not made inadmissible by the hearsay rule.

(5) Existing law provides that evidence of a statement is not made inadmissible by the hearsay rule if the statement was made for the purpose of medical diagnosis or treatment, as specified, by a child who at the time was under 12 years of age describing any act or attempted act of child abuse or neglect.

This bill would expand this provision to exclude from the hearsay rule evidence of a statement by a dependent person with a developmental disability or cognitive mental impairment made for the purpose of medical diagnosis or treatment describing any act or attempted act of abuse or neglect.

(6) Existing law provides that in a criminal prosecution in which the victim is a minor, a statement by the victim when he or she was under



12 years of age describing abuse or attempted abuse of him or her is not made inadmissible by the hearsay rule if certain conditions are met.

This bill would expand this provision to include statements made by a dependent person regardless of his or her age describing abuse or attempted abuse of him or her if the same conditions are met.

(7) Existing law provides that, in a criminal proceeding charging abuse of an elder or dependent adult, evidence of a statement made by a declarant is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and certain conditions are met including that the alleged victim was 65 years of age or older or was a dependent adult.

This bill would expand this provision to apply to a statement made by an unavailable declarant in a case involving abuse of a dependent person provided that other specified conditions are also met.

(8) Existing law provides that it is a crime for any person who is a caretaker to willfully and lewdly commit any lewd or lascivious act upon a dependent adult with specified intent punishable by imprisonment in the state prison for 1, 2, or 3 years or by imprisonment in a county jail. If the crime is committed by use of force, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, the crime is punishable by imprisonment in the state prison for 3, 6, or 8 years.

This bill would make these provisions applicable to all dependent persons regardless of age. Because this bill would change the definition of a crime, this bill would impose a state-mandated local program.

(9) Existing law provides that it is a crime for any person to, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully cause or permit any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, to suffer unjustifiable physical pain or mental suffering. Existing law provides that it is a crime for any person, having the care or custody of any elder or dependent adult, to willfully cause or permit the person or health of the elder or dependent adult to be injured or to willfully cause or permit the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered.

This bill would make this provision applicable to all dependent persons regardless of age. Because this bill would change the definition of a crime, this bill would impose a state-mandated local program.

(10) Existing law provides, upon conviction of a felony violation of provisions proscribing theft, embezzlement, extortion, *or* other property crimes, that the fact that the victim was an elder or dependent



adult shall be considered a circumstance in aggravation when imposing a term of imprisonment.

This bill would provide that the fact that the victim was a dependent person, regardless of age, would be considered a circumstance in aggravation when imposing a term of imprisonment for a felony violation of the specified provisions.

(11) Existing law provides that examination of a witness shall be open to the public except that in a criminal proceeding in which the defendant is charged with certain specified sexual crimes against a minor under 16 years of age, the court shall, upon motion, conduct a hearing to determine whether testimony of and relating to the minor shall be closed to the public.

This bill would expand this provision to allow the court to close the testimony of, and relating to, a dependent person to the public.

(12) Existing law provides that a magistrate may postpone a preliminary examination of a child who is 10 years of age or younger for one court day in order to accommodate his or her needs.

This bill would expand this provision to permit the accommodation of the needs of a dependent person.

(13) Existing law provides that examination of a witness shall be open to the public except that a magistrate may, upon motion, close the examination, as specified, during the testimony of a minor witness who is the complaining victim of a sex offense if testimony before the general public would be detrimental and no alternatives are available to avoid the perceived harm.

This bill would provide for the closure of the examination of a dependent person under the same circumstances.

(14) Existing law provides that any prosecution witness before a grand jury who is a minor if the case involves a violation of certain specified sex offenses may select a support person to attend his or her testimony, as specified.

This bill would provide a dependent person the opportunity to select a person to provide support as he or she testifies before the grand jury under the same circumstances.

(15) Existing law provides that in any criminal trial or proceeding in which a child who is 10 years of age or younger testifies, the court shall upon the request of a party instruct the jury concerning their evaluation of that testimony.

This bill would provide that similar instruction concerning evaluation of testimony shall be given to the jury upon the request of



a party when a person with a developmental disability, or other cognitive, mental, or communication impairment testifies.

(16) Existing law provides that in any criminal proceeding in which the defendant is charged with any specified offense or an attempt to commit that offense with or upon a person with a disability, the court may make accommodations to support the person with a disability, as specified.

This bill would add the offense of elder or dependent adult abuse to those offenses that, if charged in any criminal proceeding and are alleged to have been committed with or upon a person with a disability, allow the court to make accommodations for the person with a disability.

(17) Existing law, the Child Abuse and Neglect Reporting Act, requires certain mandated reporters to report, as specified, incidents of child abuse or neglect of a child within *at least* 36 hours of receiving information on an incident. A failure to report as required is a misdemeanor.

This bill would also provide that the failure of a mandated reporter to report would be a continuing offense until the failure is discovered by an agency designated to accept reports of abuse. Because this bill would change the definition of an existing crime, it would impose a state-mandated local program.

(18) Existing law provides that every police officer or deputy sheriff assigned to field or investigatory duties, as specified, shall complete an elder and dependent adult abuse training course including specified subjects and certified by the Commission on Peace Officer Standards and Training.

This bill would provide that *on or before January 1, 2008*, this training course cover recognition and reporting of abuse, neglect, and fraud committed against elder adults and dependent persons, regardless of age. By increasing training requirements, the bill would impose a state-mandated local program.

(19) Existing law requires certain mandated reporters to report, as specified, incidents of abuse or incidents in which he or she has been told of abuse of an elder or dependent adult.

This bill would expand these provisions to include all dependent persons, *as defined*. This bill would also require that sexual abuse, as defined, be reported, and provide that the failure of a mandated reporter to report would be a continuing offense until the failure is discovered by an agency designated to accept reports of abuse.



(20) This bill would also state legislative intent to ensure that people who cannot live independently are treated fairly by the criminal justice system.

This bill would state legislative intent to protect the rights of developmentally disabled persons and other dependent persons who are victims of crime and to provide that developmentally disabled persons and other dependent persons who testify in court are given the same rights afforded to minor children in the same situation.

(21) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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. It is the intent of the Legislature to enact
2 legislation protecting the rights of developmentally disabled
3 persons and other dependent persons who are victims of crimes
4 and ensuring that developmentally disabled persons and other
5 dependent persons who are called upon to testify in a court of law
6 are given ~~all of the rights afforded to minor children in the same~~
7 ~~situation~~ *equal access to the criminal justice system.*

8 SEC. 2. Section 177 is added to the Evidence Code, to read:
9 177. “Dependent person” means any person who has
10 physical or mental limitations which restrict his or her ability to
11 carry out normal activities or to protect his or her rights, including,
12 but not limited to, persons who have physical or developmental
13 disabilities or whose physical or mental abilities have diminished
14 because of age. “Dependent person” includes any person who is



1 admitted as an inpatient to a 24-hour health facility, as defined in
2 Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

3 SEC. 3. Section 710 of the Evidence Code is amended to read:

4 710. Every witness before testifying shall take an oath or
5 make an affirmation or declaration in the form provided by law,
6 except that a child under the age of 10 or a dependent person with
7 a developmental disability or cognitive mental impairment, in the
8 court's discretion, may be required only to promise to tell the truth.

9 SEC. 4. Section 765 of the Evidence Code is amended to read:

10 765. (a) The court shall exercise reasonable control over the
11 mode of interrogation of a witness so as to make interrogation as
12 rapid, as distinct, and as effective for the ascertainment of the truth,
13 as may be, and to protect the witness from undue harassment or
14 embarrassment.

15 (b) With a witness under the age of 14 or a dependent person
16 with a developmental disability or cognitive mental impairment,
17 the court shall take special care to protect him or her from undue
18 harassment or embarrassment, and to restrict the unnecessary
19 repetition of questions. The court shall also take special care to
20 ensure that questions are stated in a form which is appropriate to
21 the age or cognitive level of the witness. The court may, in the
22 interests of justice, on objection by a party, forbid the asking of a
23 question which is in a form that is not reasonably likely to be
24 understood by a person of the age or cognitive level of the witness.

25 SEC. 5. Section 767 of the Evidence Code is amended to read:

26 767. (a) Except under special circumstances where the
27 interests of justice otherwise require:

28 (1) A leading question may not be asked of a witness on direct
29 or redirect examination.

30 (2) A leading question may be asked of a witness on
31 cross-examination or recross-examination.

32 (b) The court may, in the interests of justice permit a leading
33 question to be asked of a child under 10 years of age or a dependent
34 person with a developmental disability or cognitive mental
35 impairment in a case involving a prosecution under Section 273a,
36 273d, 288.5, 368, or any of the acts described in Section 11165.1
37 or 11165.2 of the Penal Code.

38 SEC. 6. Section 1109 of the Evidence Code is amended to
39 read:



1 1109. (a) (1) Except as provided in subdivision (e) or (f), in
2 a criminal action in which the defendant is accused of an offense
3 involving domestic violence, evidence of the defendant's
4 commission of other domestic violence is not made inadmissible
5 by Section 1101 if the evidence is not inadmissible pursuant to
6 Section 352.

7 (2) Except as provided in subdivision (e) or (f), in a criminal
8 action in which the defendant is accused of an offense involving
9 abuse of an elder or dependent person, evidence of the defendant's
10 commission of other abuse of an elder or dependent person is not
11 made inadmissible by Section 1101 if the evidence is not
12 inadmissible pursuant to Section 352.

13 (b) In an action in which evidence is to be offered under this
14 section, the people shall disclose the evidence to the defendant,
15 including statements of witnesses or a summary of the substance
16 of any testimony that is expected to be offered, in compliance with
17 the provisions of Section 1054.7 of the Penal Code.

18 (c) This section shall not be construed to limit or preclude the
19 admission or consideration of evidence under any other statute or
20 case law.

21 (d) As used in this section, "domestic violence" has the
22 meaning set forth in Section 13700 of the Penal Code. "Abuse of
23 an elder or a dependent person" has the meaning set forth in
24 Section 15610.07 of the Welfare and Institutions Code.

25 (e) Evidence of acts occurring more than 10 years before the
26 charged offense is inadmissible under this section, unless the court
27 determines that the admission of this evidence is in the interest of
28 justice.

29 (f) Evidence of the findings and determinations of
30 administrative agencies regulating the conduct of health facilities
31 licensed under Section 1250 of the Health and Safety Code is
32 inadmissible under this section.

33 SEC. 7. Section 1228 of the Evidence Code is amended to
34 read:

35 1228. Notwithstanding any other provision of law, for the
36 purpose of establishing the elements of the crime in order to admit
37 as evidence the confession of a person accused of violating Section
38 261, 264.1, 285, 286, 288, 288a, 289, or 647a of the Penal Code,
39 a court, in its discretion, may determine that a statement of the



1 complaining witness is not made inadmissible by the hearsay rule
2 if it finds all of the following:

3 (a) The statement was made by a minor child under the age of
4 12 or dependent person, and the contents of the statement were
5 included in a written report of a law enforcement official or an
6 employee of a county welfare department.

7 (b) The statement describes the minor child or dependent
8 person as a victim of sexual abuse.

9 (c) The statement was made prior to the defendant's
10 confession. The court shall view with caution the testimony of a
11 person recounting hearsay where there is evidence of personal bias
12 or prejudice.

13 (d) There are no circumstances, such as significant
14 inconsistencies between the confession and the statement
15 concerning material facts establishing any element of the crime or
16 the identification of the defendant, that would render the statement
17 unreliable.

18 (e) The minor child or dependent person is found to be
19 unavailable pursuant to paragraph (2) or (3) of subdivision (a) of
20 Section 240 or refuses to testify.

21 (f) The confession was memorialized in a trustworthy fashion
22 by a law enforcement official.

23 If the prosecution intends to offer a statement of the
24 complaining witness pursuant to this section, the prosecution shall
25 serve a written notice upon the defendant at least 10 days prior to
26 the hearing or trial at which the prosecution intends to offer the
27 statement.

28 If the statement is offered during trial, the court's determination
29 shall be made out of the presence of the jury. If the statement is
30 found to be admissible pursuant to this section, it shall be admitted
31 out of the presence of the jury and solely for the purpose of
32 determining the admissibility of the confession of the defendant.

33 SEC. 8. Section 1253 of the Evidence Code is amended to
34 read:

35 1253. Subject to Section 1252, evidence of a statement is not
36 made inadmissible by the hearsay rule if the statement was made
37 for purposes of medical diagnosis or treatment and describes
38 medical history, or past or present symptoms, pain, or sensations,
39 or the inception or general character of the cause or external source
40 thereof insofar as reasonably pertinent to diagnosis or treatment.



1 This section applies only to a statement made by a victim who is
2 a minor at the time of the proceedings, provided the statement was
3 made when the victim was under the age of 12, or a dependent
4 person with a developmental disability or cognitive mental
5 impairment, describing any act, or attempted act, of abuse or
6 neglect. “Abuse” and “neglect,” for purposes of this section,
7 have the meanings provided in subdivision (c) of Section 1360. In
8 addition, “abuse” means any act proscribed by Chapter 5
9 (commencing with Section 281) of Title 9 of Part 1 of the Penal
10 Code committed against a minor or a dependent person with a
11 developmental disability or cognitive mental impairment.

12 SEC. 9. Section 1360 of the Evidence Code is amended to
13 read:

14 1360. (a) In a criminal prosecution where the victim is a
15 minor, a statement made by the victim when under the age of 12
16 describing any act of abuse or neglect performed with or on the
17 child by another, or describing any attempted act of abuse or
18 neglect with or on the child by another, is not made inadmissible
19 by the hearsay rule if all of the conditions in paragraphs (1), (2),
20 and (3) of subdivision (b) are met.

21 (b) In a criminal prosecution where the victim is a dependent
22 person, a statement made by the dependent person describing any
23 act of abuse or neglect performed with or on the dependent person
24 by another, or describing any attempted act of abuse or neglect
25 with or on the dependent person by another, is not made
26 inadmissible by the hearsay rule if all of the conditions in
27 paragraphs (1), (2), and (3) apply.

28 (1) The statement is not otherwise admissible by statute or
29 court rule.

30 (2) The court finds, in a hearing conducted outside the presence
31 of the jury, that the time, content, and circumstances of the
32 statement provide sufficient indicia of reliability.

33 (3) The child or dependent person either:

34 (A) Testifies at the proceedings.

35 (B) Is unavailable as a witness, in which case the statement may
36 be admitted only if there is evidence of the abuse or neglect that
37 corroborates the statement made by the child or dependent person.

38 (c) A statement may not be admitted under this section unless
39 the proponent of the statement makes known to the adverse party
40 the intention to offer the statement and the particulars of the



1 statement sufficiently in advance of the proceedings in order to
2 provide the adverse party with a fair opportunity to prepare to meet
3 the statement.

4 (d) For purposes of this section, “abuse” means an act
5 proscribed by Section 273a, 273d, or 288.5 of the Penal Code, or
6 any of the acts described in Section 11165.1 of the Penal Code, and
7 “neglect” means any of the acts described in Section 11165.2 of
8 the Penal Code.

9 SEC. 10. Section 1380 of the Evidence Code is amended to
10 read:

11 1380. (a) In a criminal proceeding charging a violation, or
12 attempted violation, of Section 368 of the Penal Code, evidence of
13 a statement made by a declarant is not made inadmissible by the
14 hearsay rule if the declarant is unavailable as a witness, as defined
15 in subdivisions (a) and (b) of Section 240, and all of the following
16 are true:

17 (1) The party offering the statement has made a showing of
18 particularized guarantees of trustworthiness regarding the
19 statement, the statement was made under circumstances which
20 indicate its trustworthiness, and the statement was not the result of
21 promise, inducement, threat, or coercion. In making its
22 determination, the court may consider only the circumstances that
23 surround the making of the statement and that render the declarant
24 particularly worthy of belief.

25 (2) There is no evidence that the unavailability of the declarant
26 was caused by, aided by, solicited by, or procured on behalf of, the
27 party who is offering the statement.

28 (3) The entire statement has been memorialized in a videotape
29 recording made by a law enforcement official, prior to the death
30 or disabling of the declarant.

31 (4) The statement was made by the victim of the alleged
32 violation.

33 (5) The statement is supported by corroborative evidence.

34 (6) The victim of the alleged violation is an individual who
35 meets both of the following requirements:

36 (A) Was 65 years of age or older or was a dependent person
37 when the alleged violation or attempted violation occurred.

38 (B) At the time of any criminal proceeding, including, but not
39 limited to, a preliminary hearing or trial, regarding the alleged
40 violation or attempted violation, is either deceased or suffers from



1 the infirmities of aging as manifested by advanced age or organic
2 brain damage, or other physical, mental, or emotional dysfunction,
3 to the extent that the ability of the person to provide adequately for
4 the person's own care or protection is impaired.

5 (b) If the prosecution intends to offer a statement pursuant to
6 this section, the prosecution shall serve a written notice upon the
7 defendant at least 10 days prior to the hearing or trial at which the
8 prosecution intends to offer the statement, unless the prosecution
9 shows good cause for the failure to provide that notice. In the event
10 that good cause is shown, the defendant shall be entitled to a
11 reasonable continuance of the hearing or trial.

12 (c) If the statement is offered during trial, the court's
13 determination as to the availability of the victim as a witness shall
14 be made out of the presence of the jury. If the defendant elects to
15 testify at the hearing on a motion brought pursuant to this section,
16 the court shall exclude from the examination every person except
17 the clerk, the court reporter, the bailiff, the prosecutor, the
18 investigating officer, the defendant and his or her counsel, an
19 investigator for the defendant, and the officer having custody of
20 the defendant. Notwithstanding any other provision of law, the
21 defendant's testimony at the hearing shall not be admissible in any
22 other proceeding except the hearing brought on the motion
23 pursuant to this section. If a transcript is made of the defendant's
24 testimony, it shall be sealed and transmitted to the clerk of the court
25 in which the action is pending.

26 SEC. 11. Section 288 of the Penal Code is amended to read:

27 288. (a) Any person who willfully and lewdly commits any
28 lewd or lascivious act, including any of the acts constituting other
29 crimes provided for in Part 1, upon or with the body, or any part
30 or member thereof, of a child who is under the age of 14 years, with
31 the intent of arousing, appealing to, or gratifying the lust, passions,
32 or sexual desires of that person or the child, is guilty of a felony
33 and shall be punished by imprisonment in the state prison for three,
34 six, or eight years.

35 (b) (1) Any person who commits an act described in
36 subdivision (a) by use of force, violence, duress, menace, or fear
37 of immediate and unlawful bodily injury on the victim or another
38 person, is guilty of a felony and shall be punished by imprisonment
39 in the state prison for three, six, or eight years.



1 (2) Any person who is a caretaker and commits an act described
2 in subdivision (a) upon a dependent person by use of force,
3 violence, duress, menace, or fear of immediate and unlawful
4 bodily injury on the victim or another person, with the intent
5 described in subdivision (a), is guilty of a felony and shall be
6 punished by imprisonment in the state prison for three, six, or eight
7 years.

8 (c) (1) Any person who commits an act described in
9 subdivision (a) with the intent described in that subdivision, and
10 the victim is a child of 14 or 15 years, and that person is at least 10
11 years older than the child, is guilty of a public offense and shall be
12 punished by imprisonment in the state prison for one, two, or three
13 years, or by imprisonment in a county jail for not more than one
14 year. In determining whether the person is at least 10 years older
15 than the child, the difference in age shall be measured from the
16 birth date of the person to the birth date of the child.

17 (2) Any person who is a caretaker and commits an act described
18 in subdivision (a) upon a dependent person, with the intent
19 described in subdivision (a), is guilty of a public offense and shall
20 be punished by imprisonment in the state prison for one, two, or
21 three years, or by imprisonment in a county jail for not more than
22 one year.

23 (d) In any arrest or prosecution under this section or Section
24 288.5, the peace officer, district attorney, and the court shall
25 consider the needs of the child victim or dependent person and
26 shall do whatever is necessary, within existing budgetary
27 resources, and constitutionally permissible to prevent
28 psychological harm to the child victim or to prevent psychological
29 harm to the dependent person victim resulting from participation
30 in the court process.

31 (e) Upon the conviction of any person for a violation of
32 subdivision (a) or (b), the court may, in addition to any other
33 penalty or fine imposed, order the defendant to pay an additional
34 fine not to exceed ten thousand dollars (\$10,000). In setting the
35 amount of the fine, the court shall consider any relevant factors,
36 including, but not limited to, the seriousness and gravity of the
37 offense, the circumstances of its commission, whether the
38 defendant derived any economic gain as a result of the crime, and
39 the extent to which the victim suffered economic losses as a result
40 of the crime. Every fine imposed and collected under this section



1 shall be deposited in the Victim-Witness Assistance Fund to be
2 available for appropriation to fund child sexual exploitation and
3 child sexual abuse victim counseling centers and prevention
4 programs pursuant to Section 13837.

5 If the court orders a fine imposed pursuant to this subdivision,
6 the actual administrative cost of collecting that fine, not to exceed
7 2 percent of the total amount paid, may be paid into the general
8 fund of the county treasury for the use and benefit of the county.

9 (f) For purposes of paragraph (2) of subdivision (b) and
10 paragraph (2) of subdivision (c), the following definitions apply:

11 (1) "Caretaker" means an owner, operator, administrator,
12 employee, independent contractor, agent, or volunteer of any of
13 the following public or private facilities when the facilities provide
14 care for elder or dependent persons:

15 (A) Twenty-four hour health facilities, as defined in Sections
16 1250, 1250.2, and 1250.3 of the Health and Safety Code.

17 (B) Clinics.

18 (C) Home health agencies.

19 (D) Adult day health care centers.

20 (E) Secondary schools that serve dependent persons and
21 postsecondary educational institutions that serve dependent
22 persons or elders.

23 (F) Sheltered workshops.

24 (G) Camps.

25 (H) Community care facilities, as defined by Section 1402 of
26 the Health and Safety Code, and residential care facilities for the
27 elderly, as defined in Section 1569.2 of the Health and Safety
28 Code.

29 (I) Respite care facilities.

30 (J) Foster homes.

31 (K) Regional centers for persons with developmental
32 disabilities.

33 (L) A home health agency licensed in accordance with Chapter
34 8 (commencing with Section 1725) of Division 2 of the Health and
35 Safety Code.

36 (M) An agency that supplies in-home supportive services.

37 (N) Board and care facilities.

38 (O) Any other protective or public assistance agency that
39 provides health services or social services to elder or dependent
40 persons, including, but not limited to, in-home supportive



1 services, as defined in Section 14005.14 of the Welfare and
2 Institutions Code.

3 (P) Private residences.

4 (2) “Board and care facilities” means licensed or unlicensed
5 facilities that provide assistance with one or more of the following
6 activities:

7 (A) Bathing.

8 (B) Dressing.

9 (C) Grooming.

10 (D) Medication storage.

11 (E) Medical dispensation.

12 (F) Money management.

13 (3) “Dependent person” means any person who has a mental
14 disability or disorder that restricts his or her ability to carry out
15 normal activities or to protect his or her rights, including, but not
16 limited to, persons who have developmental disabilities, persons
17 whose mental abilities have significantly diminished because of
18 age.

19 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
20 subdivision (c) apply to the owners, operators, administrators,
21 employees, independent contractors, agents, or volunteers
22 working at these public or private facilities and only to the extent
23 that the individuals personally commit, conspire, aid, abet, or
24 facilitate any act prohibited by paragraph (2) of subdivision (b)
25 and paragraph (2) of subdivision (c).

26 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
27 subdivision (c) do not apply to a caretaker who is a spouse of, or
28 who is in an equivalent domestic relationship with, the dependent
29 person under care.

30 SEC. 12. Section 368 of the Penal Code is amended to read:

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

39 (b) (1) Any person who, under circumstances or conditions
40 likely to produce great bodily harm or death, willfully causes or



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

12 (2) If in the commission of an offense described in paragraph
13 (1), the victim suffers great bodily injury, as defined in Section
14 12022.7, the defendant shall receive an additional term in the state
15 prison as follows:

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

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

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

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

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

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

38 (d) Any person who is not a caretaker who violates any
39 provision of law proscribing theft or embezzlement, with respect
40 to the property of an elder or a dependent person, and who knows



1 or reasonably should know that the victim is an elder or a
2 dependent person, is punishable by imprisonment in a county jail
3 not exceeding one year, or in the state prison for two, three, or four
4 years, when the money, labor, or real or personal property taken
5 is of a value exceeding four hundred dollars (\$400); and by a fine
6 not exceeding one thousand dollars (\$1,000), by imprisonment in
7 a county jail not exceeding one year, or by both that fine and
8 imprisonment, when the money, labor, or real or personal property
9 taken is of a value not exceeding four hundred dollars (\$400).

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

21 (f) Any person who commits the false imprisonment of an elder
22 or a dependent person by the use of violence, menace, fraud, or
23 deceit is punishable by imprisonment in the state prison for two,
24 three, or four years.

25 (g) As used in this section, “elder” means any person who is
26 65 years of age or older.

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

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

39 (j) Nothing in this section shall preclude prosecution under
40 both this section and Section 187 or 12022.7 or any other provision



1 of law. However, a person shall not receive an additional term of
2 imprisonment under both paragraphs (2) and (3) of subdivision (b)
3 for any single offense, nor shall a person receive an additional term
4 of imprisonment under both Section 12022.7 and paragraph (2) or
5 (3) of subdivision (b) for any single offense.

6 SEC. 13. Section 502.9 of the Penal Code is amended to read:

7 502.9. Upon conviction of a felony violation under this
8 chapter, the fact that the victim was an elder or dependent person,
9 as defined in Section 368, shall be considered a circumstance in
10 aggravation when imposing a term under subdivision (b) of
11 Section 1170.

12 SEC. 14. Section 515 of the Penal Code is amended to read:

13 515. Upon conviction of a felony violation under this chapter,
14 the fact that the victim was an elder or dependent person, as
15 defined in Section 368, shall be considered a circumstance in
16 aggravation when imposing a term under subdivision (b) of
17 Section 1170.

18 SEC. 15. Section 525 of the Penal Code is amended to read:

19 525. Upon conviction of a felony violation under this chapter,
20 the fact that the victim was an elder or dependent person, as
21 defined in Section 368, shall be considered a circumstance in
22 aggravation when imposing a term under subdivision (b) of
23 Section 1170.

24 SEC. 16. Section 859.1 of the Penal Code is amended to read:

25 859.1. (a) In any criminal proceeding in which the defendant
26 is charged with any offense specified in Section 868.8 on a minor
27 under the age of 16 years, or a dependent person, as defined in
28 subdivision (h) of Section 368, the court shall, upon motion of the
29 prosecuting attorney, conduct a hearing to determine whether the
30 testimony of, and testimony relating to, a minor or dependent
31 person shall be closed to the public in order to protect the minor's
32 or the dependent person's reputation.

33 (b) In making this determination, the court shall consider all of
34 the following:

35 (1) The nature and seriousness of the offense.

36 (2) The age of the minor.

37 (3) The extent to which the size of the community would
38 preclude the anonymity of the victim.

39 (4) The likelihood of public opprobrium due to the status of the
40 victim.



1 (5) Whether there is an overriding public interest in having an
2 open hearing.

3 (6) Whether the prosecution has demonstrated a substantial
4 probability that the identity of the witness would otherwise be
5 disclosed to the public during that proceeding, and demonstrated
6 a substantial probability that the disclosure of his or her identity
7 would cause serious harm to the witness.

8 (7) Whether the witness has disclosed information concerning
9 the case to the public through press conferences, public meetings,
10 or other means.

11 (8) Other factors the court may deem necessary to protect the
12 interests of justice.

13 SEC. 17. Section 861.5 of the Penal Code is amended to read:

14 861.5. Notwithstanding subdivision (a) of Section 861, the
15 magistrate may postpone the preliminary examination for one
16 court day in order to accommodate the special physical, mental, or
17 emotional needs of a child witness who is 10 years of age or
18 younger or a dependent person, as defined in subdivision (h) of
19 Section 368.

20 The magistrate shall admonish both the prosecution and defense
21 against coaching the witness prior to the witness' next appearance
22 in the preliminary examination.

23 SEC. 18. Section 868.7 of the Penal Code is amended to read:

24 868.7. (a) Notwithstanding any other provision of law, the
25 magistrate may, upon motion of the prosecutor, close the
26 examination in the manner described in Section 868 during the
27 testimony of a witness:

28 (1) Who is a minor or a dependent person, as defined in
29 subdivision (h) of Section 368, and is the complaining victim of
30 a sex offense, where testimony before the general public would be
31 likely to cause serious psychological harm to the witness and
32 where no alternative procedures, including, but not limited to,
33 videotaped deposition or contemporaneous examination in
34 another place communicated to the courtroom by means of
35 closed-circuit television, are available to avoid the perceived
36 harm.

37 (2) Whose life would be subject to a substantial risk in
38 appearing before the general public, and where no alternative
39 security measures, including, but not limited to, efforts to conceal
40 his or her features or physical description, searches of members of



1 the public attending the examination, or the temporary exclusion
2 of other actual or potential witnesses, would be adequate to
3 minimize the perceived threat.

4 (b) In any case where public access to the courtroom is
5 restricted during the examination of a witness pursuant to this
6 section, a transcript of the testimony of the witness shall be made
7 available to the public as soon as is practicable.

8 This section shall become operative on January 1, 1987.

9 SEC. 19. Section 939.21 of the Penal Code is amended to
10 read:

11 939.21. (a) Any prosecution witness before the grand jury in
12 a proceeding involving a violation of Section 243.4, 261, 273a,
13 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of
14 Section 314, Section 368, 647.6, or former Section 647a, who is
15 a minor or a dependent person, may, at the discretion of the
16 prosecution, select a person of his or her own choice to attend the
17 testimony of the prosecution witness for the purpose of providing
18 support. The person chosen shall not be a witness in the same
19 proceeding, or a person described in Section 1070 of the Evidence
20 Code.

21 (b) The grand jury foreperson shall inform any person
22 permitted to attend the grand jury proceedings pursuant to this
23 section that grand jury proceedings are confidential and may not
24 be discussed with anyone not in attendance at the proceedings. The
25 foreperson also shall admonish that person not to prompt, sway, or
26 influence the witness in any way. Nothing in this section shall
27 preclude the presiding judge from exercising his or her discretion
28 to remove a person from the grand jury proceeding whom the
29 judge believes is prompting, swaying, or influencing the witness.

30 SEC. 20. Section 1127g is added to the Penal Code, to read:

31 1127g. In any criminal trial or proceeding in which a person
32 with a developmental disability, or other cognitive, mental, or
33 communication impairment testifies as a witness, upon the request
34 of a party, the court shall instruct the jury, as follows:

35 In evaluating the testimony of a person with a developmental
36 disability, or other cognitive, mental, or communication
37 impairment, you should consider all of the factors surrounding the
38 person's testimony, including their level of cognitive
39 development. Although, because of his or her level of cognitive
40 development, a person with a developmental disability, or other



1 cognitive, mental, or communication impairment may perform
2 differently as a witness, that does not mean that a person with a
3 developmental disability, or other cognitive, mental, or
4 communication impairment is any more or less credible a witness
5 than another witness. You should not discount or distrust the
6 testimony of a person with a developmental disability, or other
7 cognitive, mental, or communication impairment solely because
8 he or she is a person with a developmental disability, or other
9 cognitive, mental, or communication impairment.

10 SEC. 21. Section 1347.5 of the Penal Code is amended to
11 read:

12 1347.5. (a) It is the intent of the Legislature, in enacting this
13 section, to provide the court with discretion to modify court
14 procedures, as a reasonable accommodation, to assure that adults
15 and children with disabilities who have been victims of an alleged
16 sexual or otherwise specified offense are able to participate
17 effectively in criminal proceedings. In exercising its discretion,
18 the court shall balance the rights of the defendant against the right
19 of the victim who has a disability to full access and participation
20 in the proceedings, while preserving the integrity of the court's
21 truthfinding function.

22 (1) For purposes of this section, the term "disability" is
23 defined in paragraphs (1) and (2) of subdivision (c) of Section
24 11135 of the Government Code.

25 (2) The right of the victim is not to confront the perpetrator, but
26 derives under both Section 504 of the Rehabilitation Act of 1973
27 (29 U.S.C. Sec. 794) and the Americans with Disabilities Act of
28 1990 (42 U.S.C. Sec. 12101 and following) as a right to participate
29 in or benefit from the same services or services that are equal or
30 as effective as those enjoyed by persons without disabilities.

31 (b) Notwithstanding any other law, in any criminal proceeding
32 in which the defendant is charged with a violation of Section 220,
33 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5,
34 or 289, subdivision (1) of Section 314, Section 368, 647.6, or with
35 any attempt to commit a crime listed in this subdivision,
36 committed with or upon a person with a disability, the court in its
37 discretion may make accommodations to support the person with
38 a disability, including, but not limited to, any of the following:

39 (1) Allow the person with a disability reasonable periods of
40 relief from examination and cross-examination during which he or



1 she may retire from the courtroom. The judge may also allow other
2 witnesses in the proceeding to be examined when the person with
3 a disability retires from the courtroom.

4 (2) Allow the person with a disability to utilize a support person
5 pursuant to Section 868.5 or a regional center representative
6 providing services to a developmentally disabled individual
7 pursuant to Article 1 (commencing with Section 4620) or Article
8 2 (commencing with Section 4640) of Chapter 5 of Division 4.5
9 of the Welfare and Institutions Code. In addition to, or instead of,
10 allowing the person with a disability to utilize a support person or
11 regional center representative pursuant to this paragraph, the court
12 may allow the person with a disability to utilize a person necessary
13 to facilitate the communication or physical needs of
14 developmentally disabled individuals.

15 (3) Notwithstanding Section 68119 of the Government Code,
16 the judge may remove his or her robe if the judge believes that this
17 formal attire prevents full participation of the person with a
18 disability because it is intimidating to him or her.

19 (4) The judge, parties, witnesses, support persons, and court
20 personnel may be relocated within the courtroom to facilitate a
21 more comfortable and personal environment for the person with
22 a disability as well as accommodating any specific requirements
23 for communication by that person.

24 (c) The prosecutor may apply for an order that the testimony of
25 the person with a disability at the preliminary hearing, in addition
26 to being stenographically recorded, be recorded and preserved on
27 videotape.

28 (1) The application for the order shall be in writing and made
29 three days prior to the preliminary hearing.

30 (2) Upon timely receipt of the application, the judge shall order
31 that the testimony of the person with a disability given at the
32 preliminary hearing be taken and preserved on videotape. The
33 videotape shall be transmitted to the clerk of the court in which the
34 action is pending.

35 (3) If at the time of trial the court finds that further testimony
36 would cause the person with a disability emotional trauma so that
37 he or she is medically unavailable or otherwise unavailable within
38 the meaning of Section 240 of the Evidence Code, the court may
39 admit the videotape of his or her testimony at the preliminary



1 hearing as former testimony under Section 1291 of the Evidence
2 Code.

3 (4) Any videotape that is taken pursuant to this subdivision is
4 subject to a protective order of the court for the purpose of
5 protecting the privacy of the person with a disability. This
6 subdivision does not affect the provisions of subdivision (b) of
7 Section 868.7.

8 (d) Notwithstanding any other law, the court in any criminal
9 proceeding, upon written notice of the prosecutor made at least
10 three days prior to the date of the preliminary hearing or trial date
11 on which the testimony of the person with a disability is scheduled,
12 or during the course of the proceeding on the court's own motion,
13 may order that the testimony of the person with a disability be
14 taken by contemporaneous examination and cross-examination in
15 another place and out of the presence of the judge, jury, and
16 defendant, and communicated to the courtroom by means of
17 two-way closed-circuit television, if the court makes all of the
18 following findings:

19 (1) The person with a disability will be called on to testify
20 concerning facts of an alleged sexual offense, or other crime as
21 specified in subdivision (b), committed on or with that person.

22 (2) The impact on the person with a disability of one or more
23 of the factors enumerated in subparagraphs (A) to (D), inclusive,
24 is shown by clear and convincing evidence to be so substantial as
25 to make the person with a disability unavailable as a witness unless
26 closed-circuit television is used. The refusal of the person with a
27 disability to testify shall not alone constitute sufficient evidence
28 that the special procedure described in this subdivision is
29 necessary in order to accommodate the disability. The court may
30 take into consideration the relationship between the person with a
31 disability and the defendant or defendants.

32 (A) Threats of serious bodily injury to be inflicted on the
33 person with a disability or a family member, of incarceration,
34 institutionalization, or deportation of the person with a disability
35 or a family member, or of removal of the person with a disability
36 from his or her residence by withholding needed services when the
37 threats come from a service provider, in order to prevent or
38 dissuade the person with a disability from attending or giving
39 testimony at any trial or court proceeding or to prevent that person



1 from reporting the alleged offense or from assisting in criminal
2 prosecution.

3 (B) Use of a firearm or any other deadly weapon during the
4 commission of the crime.

5 (C) Infliction of great bodily injury upon the person with a
6 disability during the commission of the crime.

7 (D) Conduct on the part of the defendant or defense counsel
8 during the hearing or trial that causes the person with a disability
9 to be unable to continue his or her testimony.

10 (e) (1) The hearing on the motion brought pursuant to this
11 subdivision shall be conducted out of the presence of the jury.

12 (2) Notwithstanding Section 804 of the Evidence Code or any
13 other law, the court, in determining the merits of the motion, shall
14 not compel the person with a disability to testify at the hearing; nor
15 shall the court deny the motion on the ground that the person with
16 a disability has not testified.

17 (3) In determining whether the impact on an individual person
18 with a disability of one or more of the factors enumerated under
19 paragraph (2) of subdivision (d) is so substantial that the person is
20 unavailable as a witness unless the closed-circuit television
21 procedure is employed, the court may question the person with a
22 disability in chambers, or at some other comfortable place other
23 than the courtroom, on the record for a reasonable period of time
24 with the support person described under paragraph (2) of
25 subdivision (b), the prosecutor, and defense counsel present. At
26 this time the court shall explain the process to the person with a
27 disability. The defendant or defendants shall not be present;
28 however, the defendant or defendants shall have the opportunity
29 to contemporaneously observe the proceedings by closed-circuit
30 television. Defense counsel shall be afforded a reasonable
31 opportunity to consult with the defendant or defendants prior to the
32 conclusion of the session in chambers.

33 (f) When the court orders the testimony of a victim who is a
34 person with a disability to be taken in another place outside of the
35 courtroom, the court shall do all of the following:

36 (1) Make a brief statement on the record, outside of the
37 presence of the jury, of the reasons in support of its order. While
38 the statement need not include traditional findings of fact, the
39 reasons shall be set forth with sufficient specificity to permit



1 meaningful review and to demonstrate that discretion was
2 exercised in a careful, reasonable, and equitable manner.

3 (2) Instruct the members of the jury that they are to draw no
4 inferences from the use of closed-circuit television as a means of
5 assuring the full participation of the victim who is a person with
6 a disability by accommodating that individual's disability.

7 (3) Instruct respective counsel, outside of the presence of the
8 jury, that they are to make no comment during the course of the
9 trial on the use of closed-circuit television procedures.

10 (4) Instruct the support person, if the person is part of the
11 court's accommodation of the disability, outside of the presence of
12 the jury, that he or she is not to coach, cue, or in any way influence
13 or attempt to influence the testimony of the person with a
14 disability.

15 (5) Order that a complete record of the examination of the
16 person with a disability, including the images and voices of all
17 persons who in any way participate in the examination, be made
18 and preserved on videotape in addition to being stenographically
19 recorded. The videotape shall be transmitted to the clerk of the
20 court in which the action is pending and shall be made available
21 for viewing to the prosecuting attorney, the defendant, and his or
22 her attorney, during ordinary business hours. The videotape shall
23 be destroyed after five years have elapsed from the date of entry
24 of judgment. If an appeal is filed, the tape shall not be destroyed
25 until a final judgment on appeal has been ordered. Any videotape
26 that is taken pursuant to this section is subject to a protective order
27 of the court for the purpose of protecting the privacy of the person
28 with a disability. This subdivision does not affect the provisions of
29 subdivision (b) of Section 868.7.

30 (g) When the court orders the testimony of a victim who is a
31 person with a disability to be taken in another place outside the
32 courtroom, nothing in this section shall prohibit the court from
33 ordering the victim to appear in the courtroom for a limited
34 purpose, including the identification of the defendant or
35 defendants as the court deems necessary.

36 (h) The examination shall be under oath, and the defendant
37 shall be able to see and hear the person with a disability. If two-way
38 closed-circuit television is used, the defendant's image shall be
39 transmitted live to the person with a disability.



1 (i) Nothing in this section shall affect the disqualification of
2 witnesses pursuant to Section 701 of the Evidence Code.

3 (j) The cost of examination by contemporaneous closed-circuit
4 television ordered pursuant to this section shall be borne by the
5 court out of its existing budget.

6 (k) This section shall not be construed to obviate the need to
7 provide other accommodations necessary to ensure accessibility
8 of courtrooms to persons with disabilities nor prescribe a lesser
9 standard of accessibility or usability for persons with disabilities
10 than that provided by Title II of the Americans with Disabilities
11 Act of 1990 (42 U.S.C. Sec. 12101 and following) and federal
12 regulations adopted pursuant to that act.

13 (l) The Judicial Council shall report to the Legislature, no later
14 than two years after the enactment of this subdivision, on the
15 frequency of the use and effectiveness of admitting the videotape
16 of testimony by means of closed-circuit television.

17 SEC. 22. Section 11166 of the Penal Code is amended to read:

18 11166. (a) Except as provided in subdivision (c), a mandated
19 reporter shall make a report to an agency specified in Section
20 11165.9 whenever the mandated reporter, in his or her professional
21 capacity or within the scope of his or her employment, has
22 knowledge of or observes a child whom the mandated reporter
23 knows or reasonably suspects has been the victim of child abuse
24 or neglect. The mandated reporter shall make a report to the
25 agency immediately or as soon as is practicably possible by
26 telephone, and the mandated reporter shall prepare and send a
27 written report thereof within 36 hours of receiving the information
28 concerning the incident. The mandated reporter may include with
29 the report any nonprivileged documentary evidence the mandated
30 reporter possesses relating to the incident.

31 (1) For the purposes of this article, “reasonable suspicion”
32 means that it is objectively reasonable for a person to entertain a
33 suspicion, based upon facts that could cause a reasonable person
34 in a like position, drawing, when appropriate, on his or her training
35 and experience, to suspect child abuse or neglect. For the purpose
36 of this article, the pregnancy of a minor does not, in and of itself,
37 constitute a basis for a reasonable suspicion of sexual abuse.

38 (2) The agency shall be notified and a report shall be prepared
39 and sent even if the child has expired, regardless of whether or not



1 the possible abuse was a factor contributing to the death, and even
2 if suspected child abuse was discovered during an autopsy.

3 (3) A report made by a mandated reporter pursuant to this
4 section shall be known as a mandated report.

5 (b) Any mandated reporter who fails to report an incident of
6 known or reasonably suspected child abuse or neglect as required
7 by this section is guilty of a misdemeanor punishable by up to six
8 months confinement in a county jail or by a fine of one thousand
9 dollars (\$1,000) or by both that fine and punishment. A failure to
10 report under this section is a continuing offense until an agency
11 specified in Section 11165.9 discovers the offense.

12 (c) (1) A clergy member who acquires knowledge or a
13 reasonable suspicion of child abuse or neglect during a penitential
14 communication is not subject to subdivision (a). For the purposes
15 of this subdivision, “penitential communication” means a
16 communication, intended to be in confidence, including, but not
17 limited to, a sacramental confession, made to a clergy member
18 who, in the course of the discipline or practice of his or her church,
19 denomination, or organization, is authorized or accustomed to
20 hear those communications, and under the discipline, tenets,
21 customs, or practices of his or her church, denomination, or
22 organization, has a duty to keep those communications secret.

23 (2) Nothing in this subdivision shall be construed to modify or
24 limit a clergy member’s duty to report known or suspected child
25 abuse or neglect when the clergy member is acting in some other
26 capacity that would otherwise make the clergy member a
27 mandated reporter.

28 (3) (A) On or before January 1, 2004, a clergy member or any
29 custodian of records for the clergy member may report to an
30 agency specified in Section 11165.9 that the clergy member or any
31 custodian of records for the clergy member, prior to January 1,
32 1997, in his or her professional capacity or within the scope of his
33 or her employment, other than during a penitential
34 communication, acquired knowledge or had a reasonable
35 suspicion that a child had been the victim of sexual abuse that the
36 clergy member or any custodian of records for the clergy member
37 did not previously report the abuse to an agency specified in
38 Section 11165.9. The provisions of Section 11172 shall apply to all
39 reports made pursuant to this paragraph.



1 (B) This paragraph shall apply even if the victim of the known
2 or suspected abuse has reached the age of majority by the time the
3 required report is made.

4 (C) The local law enforcement agency shall have jurisdiction
5 to investigate any report of child abuse made pursuant to this
6 paragraph even if the report is made after the victim has reached
7 the age of majority.

8 (d) Any commercial film and photographic print processor
9 who has knowledge of or observes, within the scope of his or her
10 professional capacity or employment, any film, photograph,
11 videotape, negative, or slide depicting a child under the age of 16
12 years engaged in an act of sexual conduct, shall report the instance
13 of suspected child abuse to the law enforcement agency having
14 jurisdiction over the case immediately, or as soon as practicably
15 possible, by telephone, and shall prepare and send a written report
16 of it with a copy of the film, photograph, videotape, negative, or
17 slide attached within 36 hours of receiving the information
18 concerning the incident. As used in this subdivision, “sexual
19 conduct” means any of the following:

20 (1) Sexual intercourse, including genital-genital, oral-genital,
21 anal-genital, or oral-anal, whether between persons of the same or
22 opposite sex or between humans and animals.

23 (2) Penetration of the vagina or rectum by any object.

24 (3) Masturbation for the purpose of sexual stimulation of the
25 viewer.

26 (4) Sadoomasochistic abuse for the purpose of sexual
27 stimulation of the viewer.

28 (5) Exhibition of the genitals, pubic, or rectal areas of any
29 person for the purpose of sexual stimulation of the viewer.

30 (e) Any other person who has knowledge of or observes a child
31 whom he or she knows or reasonably suspects has been a victim
32 of child abuse or neglect may report the known or suspected
33 instance of child abuse or neglect to an agency specified in Section
34 11165.9.

35 (f) When two or more persons, who are required to report,
36 jointly have knowledge of a known or suspected instance of child
37 abuse or neglect, and when there is agreement among them, the
38 telephone report may be made by a member of the team selected
39 by mutual agreement and a single report may be made and signed
40 by the selected member of the reporting team. Any member who



1 has knowledge that the member designated to report has failed to
2 do so shall thereafter make the report.

3 (g) (1) The reporting duties under this section are individual,
4 and no supervisor or administrator may impede or inhibit the
5 reporting duties, and no person making a report shall be subject to
6 any sanction for making the report. However, internal procedures
7 to facilitate reporting and apprise supervisors and administrators
8 of reports may be established provided that they are not
9 inconsistent with this article.

10 (2) The internal procedures shall not require any employee
11 required to make reports pursuant to this article to disclose his or
12 her identity to the employer.

13 (3) Reporting the information regarding a case of possible child
14 abuse or neglect to an employer, supervisor, school principal,
15 school counselor, coworker, or other person shall not be a
16 substitute for making a mandated report to an agency specified in
17 Section 11165.9.

18 (h) A county probation or welfare department shall
19 immediately, or as soon as practicably possible, report by
20 telephone, fax, or electronic transmission to the law enforcement
21 agency having jurisdiction over the case, to the agency given the
22 responsibility for investigation of cases under Section 300 of the
23 Welfare and Institutions Code, and to the district attorney's office
24 every known or suspected instance of child abuse or neglect, as
25 defined in Section 11165.6, except acts or omissions coming
26 within subdivision (b) of Section 11165.2, or reports made
27 pursuant to Section 11165.13 based on risk to a child which relates
28 solely to the inability of the parent to provide the child with regular
29 care due to the parent's substance abuse, which shall be reported
30 only to the county welfare or probation department. A county
31 probation or welfare department also shall send, fax, or
32 electronically transmit a written report thereof within 36 hours of
33 receiving the information concerning the incident to any agency
34 to which it makes a telephone report under this subdivision.

35 (i) A law enforcement agency shall immediately, or as soon as
36 practicably possible, report by telephone to the agency given
37 responsibility for investigation of cases under Section 300 of the
38 Welfare and Institutions Code and to the district attorney's office
39 every known or suspected instance of child abuse or neglect
40 reported to it, except acts or omissions coming within subdivision



1 (b) of Section 11165.2, which shall be reported only to the county
2 welfare or probation department. A law enforcement agency shall
3 report to the county welfare or probation department every known
4 or suspected instance of child abuse or neglect reported to it which
5 is alleged to have occurred as a result of the action of a person
6 responsible for the child's welfare, or as the result of the failure of
7 a person responsible for the child's welfare to adequately protect
8 the minor from abuse when the person responsible for the child's
9 welfare knew or reasonably should have known that the minor was
10 in danger of abuse. A law enforcement agency also shall send, fax,
11 or electronically transmit a written report thereof within 36 hours
12 of receiving the information concerning the incident to any agency
13 to which it makes a telephone report under this subdivision.

14 SEC. 23. Section 13515 of the Penal Code is amended to read:

15 13515. ~~Every~~ *On or before January 1, 2008, every* police
16 officer or deputy sheriff at a supervisory level and below who is
17 assigned field or investigative duties shall complete an elder and
18 dependent person abuse training course certified by the
19 Commission on Peace Officer Standards and Training within 18
20 months of assignment to field duties. Completion of the course
21 may be satisfied by telecourse, video training tape, or other
22 instruction. The training shall, at a minimum, include all of the
23 following subjects:

- 24 (a) Relevant laws.
- 25 (b) Recognition of elder and dependent person abuse.
- 26 (c) Reporting requirements and procedures.
- 27 (d) Neglect of elders and dependent persons.
- 28 (e) Fraud of elders and dependent persons.
- 29 (f) Physical abuse of elders and dependent persons.
- 30 (g) Psychological abuse of elders and dependent persons.
- 31 (h) The role of the local adult protective services and public
32 guardian offices.

33 SEC. 24. Section 15630 of the Welfare and Institutions Code
34 is amended to read:

35 15630. (a) Any person who has assumed full or intermittent
36 responsibility for care or custody of an elder or dependent person,
37 whether or not he or she receives compensation, including
38 administrators, supervisors, and any licensed staff of a public or
39 private facility that provides care or services for elder or dependent
40 persons, or any elder or dependent adult care custodian, health



1 practitioner, clergy member, or employee of a county adult
2 protective services agency or a local law enforcement agency, is
3 a mandated reporter.

4 (b) (1) Any mandated reporter who, in his or her professional
5 capacity, or within the scope of his or her employment, has
6 observed or has knowledge of an incident that reasonably appears
7 to be physical abuse, sexual abuse, as defined in Section 11165.1
8 of the Penal Code, abandonment, abduction, isolation, financial
9 abuse, or neglect, or is told by an elder or dependent person that
10 he or she has experienced behavior, including an act or omission,
11 constituting physical abuse, sexual abuse, as defined in Section
12 11165.1 of the Penal Code, abandonment, abduction, isolation,
13 financial abuse, or neglect, or reasonably suspects that abuse, shall
14 report the known or suspected instance of abuse by telephone
15 immediately or as soon as practicably possible, and by written
16 report sent within two working days, as follows:

17 (A) If the abuse has occurred in a long-term care facility, except
18 a state mental health hospital or a state developmental center, the
19 report shall be made to the local ombudsperson or the local law
20 enforcement agency.

21 Except in an emergency, the local ombudsperson and the local
22 law enforcement agency shall, as soon as practicable, do all of the
23 following:

24 (i) Report to the State Department of Health Services any case
25 of known or suspected abuse occurring in a long-term health care
26 facility, as defined in subdivision (a) of Section 1418 of the Health
27 and Safety Code.

28 (ii) Report to the State Department of Social Services any case
29 of known or suspected abuse occurring in a residential care facility
30 for the elderly, as defined in Section 1569.2 of the Health and
31 Safety Code, or in an adult day care facility, as defined in
32 paragraph (2) of subdivision (a) of Section 1502.

33 (iii) Report to the State Department of Health Services and the
34 California Department of Aging any case of known or suspected
35 abuse occurring in an adult day health care center, as defined in
36 subdivision (b) of Section 1570.7 of the Health and Safety Code.

37 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse
38 any case of known or suspected criminal activity.

39 (B) If the suspected or alleged abuse occurred in a state mental
40 hospital or a state developmental center, the report shall be made



1 to designated investigators of the State Department of Mental
2 Health or the State Department of Developmental Services, or to
3 the local law enforcement agency.

4 Except in an emergency, the local law enforcement agency
5 shall, as soon as practicable, report any case of known or suspected
6 criminal activity to the Bureau of Medi-Cal Fraud and Elder
7 Abuse.

8 (C) If the abuse has occurred any place other than one described
9 in subparagraph (A), the report shall be made to the adult
10 protective services agency or the local law enforcement agency.

11 (2) (A) A mandated reporter who is a clergy member who
12 acquires knowledge or reasonable suspicion of elder or dependent
13 person abuse during a penitential communication is not subject to
14 paragraph (1). For purposes of this subdivision, “penitential
15 communication” means a communication that is intended to be in
16 confidence, including, but not limited to, a sacramental confession
17 made to a clergy member who, in the course of the discipline or
18 practice of his or her church, denomination, or organization is
19 authorized or accustomed to hear those communications and under
20 the discipline tenets, customs, or practices of his or her church,
21 denomination, or organization, has a duty to keep those
22 communications secret.

23 (B) Nothing in this subdivision shall be construed to modify or
24 limit a clergy member’s duty to report known or suspected elder
25 and dependent person abuse when he or she is acting in the capacity
26 of a care custodian, health practitioner, or employee of an adult
27 protective agency.

28 (C) Notwithstanding any other provision in this section, a
29 clergy member who is not regularly employed on either a full-time
30 or part-time basis in a long-term care facility or does not have care
31 or custody of an elder or dependent person shall not be responsible
32 for reporting abuse or neglect that is not reasonably observable or
33 discernible to a reasonably prudent person having no specialized
34 training or experience in elder or dependent care.

35 (3) (A) A mandated reporter who is a physician and surgeon,
36 a registered nurse, or a psychotherapist, as defined in Section 1010
37 of the Evidence Code, shall not be required to report, pursuant to
38 paragraph (1), an incident where all of the following conditions
39 exist:



1 (i) The mandated reporter has been told by an elder or
2 dependent person that he or she has experienced behavior
3 constituting physical abuse, sexual abuse, as defined in Section
4 11165.1 of the Penal Code, abandonment, abduction, isolation,
5 financial abuse, or neglect.

6 (ii) The mandated reporter is not aware of any independent
7 evidence that corroborates the statement that the abuse has
8 occurred.

9 (iii) The elder or dependent person has been diagnosed with a
10 mental illness or dementia, or is the subject of a court-ordered
11 conservatorship because of a mental illness or dementia.

12 (iv) In the exercise of clinical judgment, the physician and
13 surgeon, the registered nurse, or the psychotherapist, as defined in
14 Section 1010 of the Evidence Code, reasonably believes that the
15 abuse did not occur.

16 (B) This paragraph shall not be construed to impose upon
17 mandated reporters a duty to investigate a known or suspected
18 incident of abuse and shall not be construed to lessen or restrict any
19 existing duty of mandated reporters.

20 (4) (A) In a long-term care facility, a mandated reporter shall
21 not be required to report as a suspected incident of abuse, as
22 defined in Section 15610.07, an incident where all of the following
23 conditions exist:

24 (i) The mandated reporter is aware that there is a proper plan
25 of care.

26 (ii) The mandated reporter is aware that the plan of care was
27 properly provided or executed.

28 (iii) A physical, mental, or medical injury occurred as a result
29 of care provided pursuant to clause (i) or (ii).

30 (iv) The mandated reporter reasonably believes that the injury
31 was not the result of abuse.

32 (B) This paragraph shall not be construed to require a mandated
33 reporter to seek, nor to preclude a mandated reporter from seeking,
34 information regarding a known or suspected incident of abuse
35 prior to reporting. This paragraph shall apply only to those
36 categories of mandated reporters that the State Department of
37 Health Services determines, upon approval by the Bureau of
38 Medi-Cal Fraud and Elder Abuse and the state long-term care
39 ombudsperson, have access to plans of care and have the training



1 and experience necessary to determine whether the conditions
2 specified in this section have been met.

3 (c) (1) Any mandated reporter who has knowledge, or
4 reasonably suspects, that types of elder or dependent person abuse
5 for which reports are not mandated have been inflicted upon an
6 elder or dependent person, or that his or her emotional well-being
7 is endangered in any other way, may report the known or suspected
8 instance of abuse.

9 (2) If the suspected or alleged abuse occurred in a long-term
10 care facility other than a state mental health hospital or a state
11 developmental center, the report may be made to the long-term
12 care ombudsperson program. Except in an emergency, the local
13 ombudsperson shall report any case of known or suspected abuse
14 to the State Department of Health Services and any case of known
15 or suspected criminal activity to the Bureau of Medi-Cal Fraud and
16 Elder Abuse, as soon as is practicable.

17 (3) If the suspected or alleged abuse occurred in a state mental
18 health hospital or a state developmental center, the report may be
19 made to the designated investigator of the State Department of
20 Mental Health or the State Department of Developmental Services
21 or to a local law enforcement agency or to the local ombudsperson.
22 Except in an emergency, the local ombudsperson and the local law
23 enforcement agency shall report any case of known or suspected
24 criminal activity to the Bureau of Medi-Cal Fraud and Elder
25 Abuse, as soon as is practicable.

26 (4) If the suspected or alleged abuse occurred in a place other
27 than a place described in paragraph (2) or (3), the report may be
28 made to the county adult protective services agency.

29 (5) If the conduct involves criminal activity not covered in
30 subdivision (b), it may be immediately reported to the appropriate
31 law enforcement agency.

32 (d) When two or more mandated reporters are present and
33 jointly have knowledge or reasonably suspect that types of abuse
34 of an elder or a dependent person for which a report is or is not
35 mandated have occurred, and when there is agreement among
36 them, the telephone report may be made by a member of the team
37 selected by mutual agreement, and a single report may be made
38 and signed by the selected member of the reporting team. Any
39 member who has knowledge that the member designated to report
40 has failed to do so shall thereafter make the report.



1 (e) A telephone report of a known or suspected instance of elder
2 or dependent person abuse shall include, if known, the name of the
3 person making the report, the name and age of the elder or
4 dependent person, the present location of the elder or dependent
5 person, the names and addresses of family members or any other
6 person responsible for the elder or dependent person's care, the
7 nature and extent of the elder or dependent person's condition, the
8 date of the incident, and any other information, including
9 information that led that person to suspect elder or dependent
10 person abuse, as requested by the agency receiving the report.

11 (f) The reporting duties under this section are individual, and
12 no supervisor or administrator shall impede or inhibit the reporting
13 duties, and no person making the report shall be subject to any
14 sanction for making the report. However, internal procedures to
15 facilitate reporting, ensure confidentiality, and apprise supervisors
16 and administrators of reports may be established, provided they
17 are not inconsistent with this chapter.

18 (g) (1) Whenever this section requires a county adult
19 protective services agency to report to a law enforcement agency,
20 the law enforcement agency shall, immediately upon request,
21 provide a copy of its investigative report concerning the reported
22 matter to that county adult protective services agency.

23 (2) Whenever this section requires a law enforcement agency
24 to report to a county adult protective services agency, the county
25 adult protective services agency shall, immediately upon request,
26 provide to that law enforcement agency a copy of its investigative
27 report concerning the reported matter.

28 (3) The requirement to disclose investigative reports pursuant
29 to this subdivision shall not include the disclosure of social
30 services records or case files that are confidential, nor shall this
31 subdivision be construed to allow disclosure of any reports or
32 records if the disclosure would be prohibited by any other
33 provision of state or federal law.

34 (h) Failure to report physical abuse, sexual abuse, as defined in
35 Section 11165.1 of the Penal Code, abandonment, abduction,
36 isolation, financial abuse, or neglect of an elder or dependent
37 person, in violation of this section, is a misdemeanor, punishable
38 by not more than six months in the county jail, by a fine of not more
39 than one thousand dollars (\$1,000), or by both that fine and
40 imprisonment. Any mandated reporter who willfully fails to report



1 physical abuse, sexual abuse, as defined in Section 11165.1 of the
 2 Penal Code, abandonment, abduction, isolation, financial abuse,
 3 or neglect of an elder or dependent person, in violation of this
 4 section, where that abuse results in death or great bodily injury,
 5 shall be punished by not more than one year in a county jail, by a
 6 fine of not more than five thousand dollars (\$5,000), or by both
 7 that fine and imprisonment. A failure to report under this section
 8 is a continuing offense until an agency specified in Section
 9 11165.9 discovers the offense.

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

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

28 However, notwithstanding Section 17610 of the Government
 29 Code, if the Commission on State Mandates determines that this
 30 act contains other costs mandated by the state, reimbursement to
 31 local agencies and school districts for those costs shall be made
 32 pursuant to Part 7 (commencing with Section 17500) of Division
 33 4 of Title 2 of the Government Code. If the statewide cost of the
 34 claim for reimbursement does not exceed one million dollars
 35 (\$1,000,000), reimbursement shall be made from the State
 36 Mandates Claims Fund.

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