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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, and 1109, of, and to add Section 177 to, the Evidence Code, and to amend Sections 288, 502.9, 515, 525, 859.1, 861.5, 868.7, 939.21, 1347.5, and 11166, 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 other functionally equivalent~~ *substantial* 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 other functionally equivalent~~ *substantial* 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 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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 if a mandated reporter knowingly conceals his or her failure to report the failure 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.

(13) 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 if a mandated reporter knowingly conceals his or her failure to report the failure to report would be a continuing offense until the failure is discovered by an agency designated to accept reports of abuse.

(14) 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~~ *witnesses in criminal cases and to ensure that they are given the same rights afforded to minor children in the same situation* *equal access to the criminal justice system.*

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. 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 ~~witnesses in criminal cases and ensuring that they are given equal~~
7 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 a
10 physical or mental impairment that substantially restricts his or her
11 ability to carry out normal activities or to protect his or her rights,
12 including, but not limited to, persons who have physical or
13 developmental disabilities or whose physical or mental abilities
14 have diminished because of age. “Dependent person” includes
15 any person who is admitted as an inpatient to a 24-hour health
16 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
17 Health and Safety Code.

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

19 710. Every witness before testifying shall take an oath or
20 make an affirmation or declaration in the form provided by law,
21 except that a child under the age of 10 or a dependent person with
22 ~~a developmental disability as defined in Section 1370.1 of the~~
23 ~~Penal Code, or other functionally equivalent mental~~ *a substantial*
24 *mental* impairment, in the court’s discretion, may be required only
25 to promise to tell the truth.

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

27 765. (a) The court shall exercise reasonable control over the
28 mode of interrogation of a witness so as to make interrogation as
29 rapid, as distinct, and as effective for the ascertainment of the truth,
30 as may be, and to protect the witness from undue harassment or
31 embarrassment.

32 (b) With a witness under the age of 14 or a dependent person
33 ~~with a developmental disability as defined in Section 1370.1 of the~~
34 ~~Penal Code, or other functionally equivalent mental~~ *with a*
35 *substantial mental* impairment, the court shall take special care to



1 protect him or her from undue harassment or embarrassment, and
2 to restrict the unnecessary repetition of questions. The court shall
3 also take special care to ensure that questions are stated in a form
4 which is appropriate to the age or cognitive level of the witness.
5 The court may, in the interests of justice, on objection by a party,
6 forbid the asking of a question which is in a form that is not
7 reasonably likely to be understood by a person of the age or
8 cognitive level of the witness.

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

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

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

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

16 (b) The court may, in the interests of justice permit a leading
17 question to be asked of a child under 10 years of age or a dependent
18 ~~person with a developmental disability as defined in Section~~
19 ~~1370.1 of the Penal Code, or other functionally equivalent person~~
20 *with a substantial* mental impairment in a case involving a
21 prosecution under Section 273a, 273d, 288.5, 368, or any of the
22 acts described in Section 11165.1 or 11165.2 of the Penal Code.

23 SEC. 6. Section 1109 of the Evidence Code is amended to
24 read:

25 1109. (a) (1) Except as provided in subdivision (e) or (f), in
26 a criminal action in which the defendant is accused of an offense
27 involving domestic violence, evidence of the defendant's
28 commission of other domestic violence is not made inadmissible
29 by Section 1101 if the evidence is not inadmissible pursuant to
30 Section 352.

31 (2) Except as provided in subdivision (e) or (f), in a criminal
32 action in which the defendant is accused of an offense involving
33 abuse of an elder or dependent person, evidence of the defendant's
34 commission of other abuse of an elder or dependent person is not
35 made inadmissible by Section 1101 if the evidence is not
36 inadmissible pursuant to Section 352.

37 (b) In an action in which evidence is to be offered under this
38 section, the people shall disclose the evidence to the defendant,
39 including statements of witnesses or a summary of the substance



1 of any testimony that is expected to be offered, in compliance with
2 the provisions of Section 1054.7 of the Penal Code.

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

6 (d) As used in this section, “domestic violence” has the
7 meaning set forth in Section 13700 of the Penal Code. “Abuse of
8 an elder or a dependent person” has the meaning set forth in
9 Section 15610.07 of the Welfare and Institutions Code.

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

14 (f) Evidence of the findings and determinations of
15 administrative agencies regulating the conduct of health facilities
16 licensed under Section 1250 of the Health and Safety Code is
17 inadmissible under this section.

18 SEC. 7. Section 288 of the Penal Code is amended to read:

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

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

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

39 (c) (1) Any person who commits an act described in
40 subdivision (a) with the intent described in that subdivision, and



1 the victim is a child of 14 or 15 years, and that person is at least 10
2 years older than the child, is guilty of a public offense and shall be
3 punished by imprisonment in the state prison for one, two, or three
4 years, or by imprisonment in a county jail for not more than one
5 year. In determining whether the person is at least 10 years older
6 than the child, the difference in age shall be measured from the
7 birth date of the person to the birth date of the child.

8 (2) Any person who is a caretaker and commits an act described
9 in subdivision (a) upon a dependent person, with the intent
10 described in subdivision (a), is guilty of a public offense and shall
11 be punished by imprisonment in the state prison for one, two, or
12 three years, or by imprisonment in a county jail for not more than
13 one year.

14 (d) In any arrest or prosecution under this section or Section
15 288.5, the peace officer, district attorney, and the court shall
16 consider the needs of the child victim or dependent person and
17 shall do whatever is necessary, within existing budgetary
18 resources, and constitutionally permissible to prevent
19 psychological harm to the child victim or to prevent psychological
20 harm to the dependent person victim resulting from participation
21 in the court process.

22 (e) Upon the conviction of any person for a violation of
23 subdivision (a) or (b), the court may, in addition to any other
24 penalty or fine imposed, order the defendant to pay an additional
25 fine not to exceed ten thousand dollars (\$10,000). In setting the
26 amount of the fine, the court shall consider any relevant factors,
27 including, but not limited to, the seriousness and gravity of the
28 offense, the circumstances of its commission, whether the
29 defendant derived any economic gain as a result of the crime, and
30 the extent to which the victim suffered economic losses as a result
31 of the crime. Every fine imposed and collected under this section
32 shall be deposited in the Victim-Witness Assistance Fund to be
33 available for appropriation to fund child sexual exploitation and
34 child sexual abuse victim counseling centers and prevention
35 programs pursuant to Section 13837.

36 If the court orders a fine imposed pursuant to this subdivision,
37 the actual administrative cost of collecting that fine, not to exceed
38 2 percent of the total amount paid, may be paid into the general
39 fund of the county treasury for the use and benefit of the county.



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

3 (1) “Caretaker” means an owner, operator, administrator,
4 employee, independent contractor, agent, or volunteer of any of
5 the following public or private facilities when the facilities provide
6 care for elder or dependent persons:

7 (A) Twenty-four hour health facilities, as defined in Sections
8 1250, 1250.2, and 1250.3 of the Health and Safety Code.

9 (B) Clinics.

10 (C) Home health agencies.

11 (D) Adult day health care centers.

12 (E) Secondary schools that serve dependent persons and
13 postsecondary educational institutions that serve dependent
14 persons or elders.

15 (F) Sheltered workshops.

16 (G) Camps.

17 (H) Community care facilities, as defined by Section 1402 of
18 the Health and Safety Code, and residential care facilities for the
19 elderly, as defined in Section 1569.2 of the Health and Safety
20 Code.

21 (I) Respite care facilities.

22 (J) Foster homes.

23 (K) Regional centers for persons with developmental
24 disabilities.

25 (L) A home health agency licensed in accordance with Chapter
26 8 (commencing with Section 1725) of Division 2 of the Health and
27 Safety Code.

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

29 (N) Board and care facilities.

30 (O) Any other protective or public assistance agency that
31 provides health services or social services to elder or dependent
32 persons, including, but not limited to, in-home supportive
33 services, as defined in Section 14005.14 of the Welfare and
34 Institutions Code.

35 (P) Private residences.

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

39 (A) Bathing.

40 (B) Dressing.



- 1 (C) Grooming.
- 2 (D) Medication storage.
- 3 (E) Medical dispensation.
- 4 (F) Money management.

5 (3) “Dependent person” means any person who has a ~~mental~~
 6 ~~disability or disorder~~ *physical or mental impairment* that
 7 substantially restricts his or her ability to carry out normal
 8 activities or to protect his or her rights, including, but not limited
 9 to, persons who have ~~developmental disabilities, persons whose~~
 10 *physical or developmental disabilities or whose physical or mental*
 11 *abilities have significantly diminished because of age.*
 12 “Dependent person” includes any person who is admitted as an
 13 inpatient to a 24-hour health facility, as defined in Sections 1250,
 14 1250.2, and 1250.3 of the Health and Safety Code.

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

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

26 SEC. 8. Section 502.9 of the Penal Code is amended to read:
 27 502.9. Upon conviction of a felony violation under this
 28 chapter, the fact that the victim was an elder or dependent person,
 29 as defined in Section 288, shall be considered a circumstance in
 30 aggravation when imposing a term under subdivision (b) of
 31 Section 1170.

32 SEC. 9. Section 515 of the Penal Code is amended to read:
 33 515. Upon conviction of a felony violation under this chapter,
 34 the fact that the victim was an elder or dependent person, as
 35 defined in Section 288, shall be considered a circumstance in
 36 aggravation when imposing a term under subdivision (b) of
 37 Section 1170.

38 SEC. 10. Section 525 of the Penal Code is amended to read:
 39 525. Upon conviction of a felony violation under this chapter,
 40 the fact that the victim was an elder or dependent person, as



1 defined in Section 288, shall be considered a circumstance in
2 aggravation when imposing a term under subdivision (b) of
3 Section 1170.

4 SEC. 11. Section 859.1 of the Penal Code is amended to read:

5 859.1. (a) In any criminal proceeding in which the defendant
6 is charged with any offense specified in Section 868.8 on a minor
7 under the age of 16 years, or a dependent person, as defined in
8 subdivision (h) of Section 288, the court shall, upon motion of the
9 prosecuting attorney, conduct a hearing to determine whether the
10 testimony of, and testimony relating to, a minor or dependent
11 person shall be closed to the public in order to protect the minor's
12 or the dependent person's reputation.

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

- 15 (1) The nature and seriousness of the offense.
- 16 (2) The age of the minor.
- 17 (3) The extent to which the size of the community would
18 preclude the anonymity of the victim.
- 19 (4) The likelihood of public opprobrium due to the status of the
20 victim.
- 21 (5) Whether there is an overriding public interest in having an
22 open hearing.
- 23 (6) Whether the prosecution has demonstrated a substantial
24 probability that the identity of the witness would otherwise be
25 disclosed to the public during that proceeding, and demonstrated
26 a substantial probability that the disclosure of his or her identity
27 would cause serious harm to the witness.
- 28 (7) Whether the witness has disclosed information concerning
29 the case to the public through press conferences, public meetings,
30 or other means.
- 31 (8) Other factors the court may deem necessary to protect the
32 interests of justice.

33 SEC. 12. Section 861.5 of the Penal Code is amended to read:

34 861.5. Notwithstanding subdivision (a) of Section 861, the
35 magistrate may postpone the preliminary examination for one
36 court day in order to accommodate the special physical, mental, or
37 emotional needs of a child witness who is 10 years of age or
38 younger or a dependent person, as defined in subdivision (h) of
39 Section 288.



1 The magistrate shall admonish both the prosecution and defense
2 against coaching the witness prior to the witness' next appearance
3 in the preliminary examination.

4 SEC. 13. Section 868.7 of the Penal Code is amended to read:

5 868.7. (a) Notwithstanding any other provision of law, the
6 magistrate may, upon motion of the prosecutor, close the
7 examination in the manner described in Section 868 during the
8 testimony of a witness:

9 (1) Who is a minor or a dependent person, as defined in
10 subdivision (h) of Section 288, and is the complaining victim of
11 a sex offense, where testimony before the general public would be
12 likely to cause serious psychological harm to the witness and
13 where no alternative procedures, including, but not limited to,
14 videotaped deposition or contemporaneous examination in
15 another place communicated to the courtroom by means of
16 closed-circuit television, are available to avoid the perceived
17 harm.

18 (2) Whose life would be subject to a substantial risk in
19 appearing before the general public, and where no alternative
20 security measures, including, but not limited to, efforts to conceal
21 his or her features or physical description, searches of members of
22 the public attending the examination, or the temporary exclusion
23 of other actual or potential witnesses, would be adequate to
24 minimize the perceived threat.

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

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

30 SEC. 14. Section 939.21 of the Penal Code is amended to
31 read:

32 939.21. (a) Any prosecution witness before the grand jury in
33 a proceeding involving a violation of Section 243.4, 261, 273a,
34 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of
35 Section 314, Section 368, 647.6, or former Section 647a, who is
36 a minor or a dependent person, may, at the discretion of the
37 prosecution, select a person of his or her own choice to attend the
38 testimony of the prosecution witness for the purpose of providing
39 support. The person chosen shall not be a witness in the same



1 proceeding, or a person described in Section 1070 of the Evidence
2 Code.

3 (b) The grand jury foreperson shall inform any person
4 permitted to attend the grand jury proceedings pursuant to this
5 section that grand jury proceedings are confidential and may not
6 be discussed with anyone not in attendance at the proceedings. The
7 foreperson also shall admonish that person not to prompt, sway, or
8 influence the witness in any way. Nothing in this section shall
9 preclude the presiding judge from exercising his or her discretion
10 to remove a person from the grand jury proceeding whom the
11 judge believes is prompting, swaying, or influencing the witness.

12 SEC. 15. Section 1127g is added to the Penal Code, to read:

13 1127g. In any criminal trial or proceeding in which a person
14 with a developmental disability, or other cognitive, mental, or
15 communication impairment testifies as a witness, upon the request
16 of a party, the court shall instruct the jury, as follows:

17 In evaluating the testimony of a person with a developmental
18 disability, or other cognitive, mental, or communication
19 impairment, you should consider all of the factors surrounding the
20 person's testimony, including their level of cognitive
21 development. Although, because of his or her level of cognitive
22 development, a person with a developmental disability, or other
23 cognitive, mental, or communication impairment may perform
24 differently as a witness, that does not mean that a person with a
25 developmental disability, or other cognitive, mental, or
26 communication impairment is any more or less credible a witness
27 than another witness. You should not discount or distrust the
28 testimony of a person with a developmental disability, or other
29 cognitive, mental, or communication impairment solely because
30 he or she is a person with a developmental disability, or other
31 cognitive, mental, or communication impairment.

32 SEC. 16. Section 1347.5 of the Penal Code is amended to
33 read:

34 1347.5. (a) It is the intent of the Legislature, in enacting this
35 section, to provide the court with discretion to modify court
36 procedures, as a reasonable accommodation, to assure that adults
37 and children with disabilities who have been victims of an alleged
38 sexual or otherwise specified offense are able to participate
39 effectively in criminal proceedings. In exercising its discretion,
40 the court shall balance the rights of the defendant against the right



1 of the victim who has a disability to full access and participation
2 in the proceedings, while preserving the integrity of the court's
3 truthfinding function.

4 (1) For purposes of this section, the term "disability" is
5 defined in paragraphs (1) and (2) of subdivision (c) of Section
6 11135 of the Government Code.

7 (2) The right of the victim is not to confront the perpetrator, but
8 derives under both Section 504 of the Rehabilitation Act of 1973
9 (29 U.S.C. Sec. 794) and the Americans with Disabilities Act of
10 1990 (42 U.S.C. Sec. 12101 and following) as a right to participate
11 in or benefit from the same services or services that are equal or
12 as effective as those enjoyed by persons without disabilities.

13 (b) Notwithstanding any other law, in any criminal proceeding
14 in which the defendant is charged with a violation of Section 220,
15 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5,
16 or 289, subdivision (1) of Section 314, Section 368, 647.6, or with
17 any attempt to commit a crime listed in this subdivision,
18 committed with or upon a person with a disability, the court in its
19 discretion may make accommodations to support the person with
20 a disability, including, but not limited to, any of the following:

21 (1) Allow the person with a disability reasonable periods of
22 relief from examination and cross-examination during which he or
23 she may retire from the courtroom. The judge may also allow other
24 witnesses in the proceeding to be examined when the person with
25 a disability retires from the courtroom.

26 (2) Allow the person with a disability to utilize a support person
27 pursuant to Section 868.5 or a regional center representative
28 providing services to a developmentally disabled individual
29 pursuant to Article 1 (commencing with Section 4620) or Article
30 2 (commencing with Section 4640) of Chapter 5 of Division 4.5
31 of the Welfare and Institutions Code. In addition to, or instead of,
32 allowing the person with a disability to utilize a support person or
33 regional center representative pursuant to this paragraph, the court
34 may allow the person with a disability to utilize a person necessary
35 to facilitate the communication or physical needs of
36 developmentally disabled individuals.

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



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

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

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

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

17 (3) If at the time of trial the court finds that further testimony
18 would cause the person with a disability emotional trauma so that
19 he or she is medically unavailable or otherwise unavailable within
20 the meaning of Section 240 of the Evidence Code, the court may
21 admit the videotape of his or her testimony at the preliminary
22 hearing as former testimony under Section 1291 of the Evidence
23 Code.

24 (4) Any videotape that is taken pursuant to this subdivision is
25 subject to a protective order of the court for the purpose of
26 protecting the privacy of the person with a disability. This
27 subdivision does not affect the provisions of subdivision (b) of
28 Section 868.7.

29 (d) Notwithstanding any other law, the court in any criminal
30 proceeding, upon written notice of the prosecutor made at least
31 three days prior to the date of the preliminary hearing or trial date
32 on which the testimony of the person with a disability is scheduled,
33 or during the course of the proceeding on the court's own motion,
34 may order that the testimony of the person with a disability be
35 taken by contemporaneous examination and cross-examination in
36 another place and out of the presence of the judge, jury, and
37 defendant, and communicated to the courtroom by means of
38 two-way closed-circuit television, if the court makes all of the
39 following findings:



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

4 (2) The impact on the person with a disability of one or more
5 of the factors enumerated in subparagraphs (A) to (D), inclusive,
6 is shown by clear and convincing evidence to be so substantial as
7 to make the person with a disability unavailable as a witness unless
8 closed-circuit television is used. The refusal of the person with a
9 disability to testify shall not alone constitute sufficient evidence
10 that the special procedure described in this subdivision is
11 necessary in order to accommodate the disability. The court may
12 take into consideration the relationship between the person with a
13 disability and the defendant or defendants.

14 (A) Threats of serious bodily injury to be inflicted on the
15 person with a disability or a family member, of incarceration,
16 institutionalization, or deportation of the person with a disability
17 or a family member, or of removal of the person with a disability
18 from his or her residence by withholding needed services when the
19 threats come from a service provider, in order to prevent or
20 dissuade the person with a disability from attending or giving
21 testimony at any trial or court proceeding or to prevent that person
22 from reporting the alleged offense or from assisting in criminal
23 prosecution.

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

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

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

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

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

38 (3) In determining whether the impact on an individual person
39 with a disability of one or more of the factors enumerated under
40 paragraph (2) of subdivision (d) is so substantial that the person is



1 unavailable as a witness unless the closed-circuit television
2 procedure is employed, the court may question the person with a
3 disability in chambers, or at some other comfortable place other
4 than the courtroom, on the record for a reasonable period of time
5 with the support person described under paragraph (2) of
6 subdivision (b), the prosecutor, and defense counsel present. At
7 this time the court shall explain the process to the person with a
8 disability. The defendant or defendants shall not be present;
9 however, the defendant or defendants shall have the opportunity
10 to contemporaneously observe the proceedings by closed-circuit
11 television. Defense counsel shall be afforded a reasonable
12 opportunity to consult with the defendant or defendants prior to the
13 conclusion of the session in chambers.

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

17 (1) Make a brief statement on the record, outside of the
18 presence of the jury, of the reasons in support of its order. While
19 the statement need not include traditional findings of fact, the
20 reasons shall be set forth with sufficient specificity to permit
21 meaningful review and to demonstrate that discretion was
22 exercised in a careful, reasonable, and equitable manner.

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

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

30 (4) Instruct the support person, if the person is part of the
31 court's accommodation of the disability, outside of the presence of
32 the jury, that he or she is not to coach, cue, or in any way influence
33 or attempt to influence the testimony of the person with a
34 disability.

35 (5) Order that a complete record of the examination of the
36 person with a disability, including the images and voices of all
37 persons who in any way participate in the examination, be made
38 and preserved on videotape in addition to being stenographically
39 recorded. The videotape shall be transmitted to the clerk of the
40 court in which the action is pending and shall be made available



1 for viewing to the prosecuting attorney, the defendant, and his or
2 her attorney, during ordinary business hours. The videotape shall
3 be destroyed after five years have elapsed from the date of entry
4 of judgment. If an appeal is filed, the tape shall not be destroyed
5 until a final judgment on appeal has been ordered. Any videotape
6 that is taken pursuant to this section is subject to a protective order
7 of the court for the purpose of protecting the privacy of the person
8 with a disability. This subdivision does not affect the provisions of
9 subdivision (b) of Section 868.7.

10 (g) When the court orders the testimony of a victim who is a
11 person with a disability to be taken in another place outside the
12 courtroom, nothing in this section shall prohibit the court from
13 ordering the victim to appear in the courtroom for a limited
14 purpose, including the identification of the defendant or
15 defendants as the court deems necessary.

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

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

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

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

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

36 SEC. 17. Section 11166 of the Penal Code is amended to read:
37 11166. (a) Except as provided in subdivision (c), a mandated
38 reporter shall make a report to an agency specified in Section
39 11165.9 whenever the mandated reporter, in his or her professional
40 capacity or within the scope of his or her employment, has



1 knowledge of or observes a child whom the mandated reporter
2 knows or reasonably suspects has been the victim of child abuse
3 or neglect. The mandated reporter shall make a report to the
4 agency immediately or as soon as is practicably possible by
5 telephone, and the mandated reporter shall prepare and send a
6 written report thereof within 36 hours of receiving the information
7 concerning the incident. The mandated reporter may include with
8 the report any nonprivileged documentary evidence the mandated
9 reporter possesses relating to the incident.

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

17 (2) The agency shall be notified and a report shall be prepared
18 and sent even if the child has expired, regardless of whether or not
19 the possible abuse was a factor contributing to the death, and even
20 if suspected child abuse was discovered during an autopsy.

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

23 (b) Any mandated reporter who fails to report an incident of
24 known or reasonably suspected child abuse or neglect as required
25 by this section is guilty of a misdemeanor punishable by up to six
26 months confinement in a county jail or by a fine of one thousand
27 dollars (\$1,000) or by both that fine and punishment. If a mandated
28 reporter knowingly conceals his or her failure to report under this
29 section, the failure to report is a continuing offense until an agency
30 specified in Section 11165.9 discovers the offense.

31 (c) (1) A clergy member who acquires knowledge or a
32 reasonable suspicion of child abuse or neglect during a penitential
33 communication is not subject to subdivision (a). For the purposes
34 of this subdivision, “penitential communication” means a
35 communication, intended to be in confidence, including, but not
36 limited to, a sacramental confession, made to a clergy member
37 who, in the course of the discipline or practice of his or her church,
38 denomination, or organization, is authorized or accustomed to
39 hear those communications, and under the discipline, tenets,



1 customs, or practices of his or her church, denomination, or
2 organization, has a duty to keep those communications secret.

3 (2) Nothing in this subdivision shall be construed to modify or
4 limit a clergy member's duty to report known or suspected child
5 abuse or neglect when the clergy member is acting in some other
6 capacity that would otherwise make the clergy member a
7 mandated reporter.

8 (3) (A) On or before January 1, 2004, a clergy member or any
9 custodian of records for the clergy member may report to an
10 agency specified in Section 11165.9 that the clergy member or any
11 custodian of records for the clergy member, prior to January 1,
12 1997, in his or her professional capacity or within the scope of his
13 or her employment, other than during a penitential
14 communication, acquired knowledge or had a reasonable
15 suspicion that a child had been the victim of sexual abuse that the
16 clergy member or any custodian of records for the clergy member
17 did not previously report the abuse to an agency specified in
18 Section 11165.9. The provisions of Section 11172 shall apply to all
19 reports made pursuant to this paragraph.

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

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

27 (d) Any commercial film and photographic print processor
28 who has knowledge of or observes, within the scope of his or her
29 professional capacity or employment, any film, photograph,
30 videotape, negative, or slide depicting a child under the age of 16
31 years engaged in an act of sexual conduct, shall report the instance
32 of suspected child abuse to the law enforcement agency having
33 jurisdiction over the case immediately, or as soon as practicably
34 possible, by telephone, and shall prepare and send a written report
35 of it with a copy of the film, photograph, videotape, negative, or
36 slide attached within 36 hours of receiving the information
37 concerning the incident. As used in this subdivision, "sexual
38 conduct" means any of the following:



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

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

5 (3) Masturbation for the purpose of sexual stimulation of the
6 viewer.

7 (4) Sadomasochistic abuse for the purpose of sexual
8 stimulation of the viewer.

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

11 (e) Any other person who has knowledge of or observes a child
12 whom he or she knows or reasonably suspects has been a victim
13 of child abuse or neglect may report the known or suspected
14 instance of child abuse or neglect to an agency specified in Section
15 11165.9.

16 (f) When two or more persons, who are required to report,
17 jointly have knowledge of a known or suspected instance of child
18 abuse or neglect, and when there is agreement among them, the
19 telephone report may be made by a member of the team selected
20 by mutual agreement and a single report may be made and signed
21 by the selected member of the reporting team. Any member who
22 has knowledge that the member designated to report has failed to
23 do so shall thereafter make the report.

24 (g) (1) The reporting duties under this section are individual,
25 and no supervisor or administrator may impede or inhibit the
26 reporting duties, and no person making a report shall be subject to
27 any sanction for making the report. However, internal procedures
28 to facilitate reporting and apprise supervisors and administrators
29 of reports may be established provided that they are not
30 inconsistent with this article.

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

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

39 (h) A county probation or welfare department shall
40 immediately, or as soon as practicably possible, report by



1 telephone, fax, or electronic transmission to the law enforcement
2 agency having jurisdiction over the case, to the agency given the
3 responsibility for investigation of cases under Section 300 of the
4 Welfare and Institutions Code, and to the district attorney's office
5 every known or suspected instance of child abuse or neglect, as
6 defined in Section 11165.6, except acts or omissions coming
7 within subdivision (b) of Section 11165.2, or reports made
8 pursuant to Section 11165.13 based on risk to a child which relates
9 solely to the inability of the parent to provide the child with regular
10 care due to the parent's substance abuse, which shall be reported
11 only to the county welfare or probation department. A county
12 probation or welfare department also shall send, fax, or
13 electronically transmit a written report thereof within 36 hours of
14 receiving the information concerning the incident to any agency
15 to which it makes a telephone report under this subdivision.

16 (i) A law enforcement agency shall immediately, or as soon as
17 practicably possible, report by telephone to the agency given
18 responsibility for investigation of cases under Section 300 of the
19 Welfare and Institutions Code and to the district attorney's office
20 every known or suspected instance of child abuse or neglect
21 reported to it, except acts or omissions coming within subdivision
22 (b) of Section 11165.2, which shall be reported only to the county
23 welfare or probation department. A law enforcement agency shall
24 report to the county welfare or probation department every known
25 or suspected instance of child abuse or neglect reported to it which
26 is alleged to have occurred as a result of the action of a person
27 responsible for the child's welfare, or as the result of the failure of
28 a person responsible for the child's welfare to adequately protect
29 the minor from abuse when the person responsible for the child's
30 welfare knew or reasonably should have known that the minor was
31 in danger of abuse. A law enforcement agency also shall send, fax,
32 or electronically transmit a written report thereof within 36 hours
33 of receiving the information concerning the incident to any agency
34 to which it makes a telephone report under this subdivision.

35 SEC. 18. Section 15630 of the Welfare and Institutions Code
36 is amended to read:

37 15630. (a) Any person who has assumed full or intermittent
38 responsibility for care or custody of an elder or dependent person,
39 whether or not he or she receives compensation, including
40 administrators, supervisors, and any licensed staff of a public or



1 private facility that provides care or services for elder or dependent
2 persons, or any elder or dependent adult care custodian, health
3 practitioner, clergy member, or employee of a county adult
4 protective services agency or a local law enforcement agency, is
5 a mandated reporter.

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

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

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

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

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

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

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



1 (B) If the suspected or alleged abuse occurred in a state mental
2 hospital or a state developmental center, the report shall be made
3 to designated investigators of the State Department of Mental
4 Health or the State Department of Developmental Services, or to
5 the local law enforcement agency.

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

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

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

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

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

37 (3) (A) A mandated reporter who is a physician and surgeon,
38 a registered nurse, or a psychotherapist, as defined in Section 1010
39 of the Evidence Code, shall not be required to report, pursuant to



1 paragraph (1), an incident where all of the following conditions
2 exist:

3 (i) The mandated reporter has been told by an elder or
4 dependent person that he or she has experienced behavior
5 constituting physical abuse, sexual abuse, as defined in Section
6 11165.1 of the Penal Code, abandonment, abduction, isolation,
7 financial abuse, or neglect.

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

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

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

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

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

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

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

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

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

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



1 ombudsperson, have access to plans of care and have the training
2 and experience necessary to determine whether the conditions
3 specified in this section have been met.

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

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

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

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

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

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



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

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

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

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

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

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

36 (h) Failure to report physical abuse, sexual abuse, as defined in
37 Section 11165.1 of the Penal Code, abandonment, abduction,
38 isolation, financial abuse, or neglect of an elder or dependent
39 person, in violation of this section, is a misdemeanor, punishable
40 by not more than six months in the county jail, by a fine of not more



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

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

22 SEC. 19. No reimbursement is required by this act pursuant
 23 to Section 6 of Article XIII B of the California Constitution
 24 because the only costs that may be incurred by a local agency or
 25 school district will be incurred because this act creates a new crime
 26 or infraction, eliminates a crime or infraction, or changes the
 27 penalty for a crime or infraction, within the meaning of Section
 28 17556 of the Government Code, or changes the definition of a
 29 crime within the meaning of Section 6 of Article XIII B of the
 30 California Constitution.

