

AMENDED IN ASSEMBLY APRIL 16, 2004

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2611**

**Introduced by Assembly Member Simitian**

February 20, 2004

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An act to amend Sections 368 and 803 of the Penal Code, and to amend Sections 15610.30, 15630, and 15657 of, *and to add Section 15630.2 to*, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2611, as amended, Simitian. Elder and dependent adult abuse.

(1) Existing law proscribes crimes against elder and dependent adults involving physical and financial abuse.

Existing law establishes criminal penalties for the willful abuse of an elder or dependent adult, when the person who permits or inflicts the abuse has knowledge that the victim is an elder or dependent adult.

This bill would revise the above standard to impose the existing penalties when the person has reasonable knowledge that the victim may be an elder or dependent adult.

(2) Existing law prescribes the time by which prosecution for various criminal offenses must be commenced, and prohibits the tolling or extension of these time limitations except under prescribed circumstances. Under existing law, the applicable period of limitation for any of certain designated offenses does not commence to run until the discovery of the offense.

This bill would ~~add~~ *provide that* the failure to report physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult to the list of offenses for which the period of limitations does not commence until *one year after* discovery of the offense, *but in no event more than 3 years after the offense itself*.

(3) The Elder Abuse and Dependent Adult Civil Protection Act requires persons characterized as mandated reporters to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, and provides that any mandated reporter who does not make the report is guilty of a misdemeanor. Existing law defines “financial abuse” for the purposes of the act.

This bill would revise the definition of financial abuse under the act. The bill would include financial institutions subject to regulation by the Commissioner of Financial Institutions or certain federal regulators as mandated reporters under the act in cases of elder financial abuse. The bill would thereby require these entities to report those cases to the adult protective services agency or the local law enforcement agency. Because a violation of this provision would be a crime, the bill would impose a state-mandated local program.

(4) Existing law includes provisions relating to the award of attorney’s fees and costs, and damages to a plaintiff, when it is proven by clear and convincing evidence that a defendant is liable for physical abuse, neglect, or financial abuse, and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

This bill would revise these provisions to change the standard for the commission of financial abuse and the proof of recklessness, oppression, fraud, or malice ~~for the above purposes~~ *financial abuse* to a preponderance of the evidence. The bill would also extend the above provisions to a defendant who has demonstrated or exhibited, recklessness, oppression, fraud, or malice in the commission of the described elder or dependent adult abuse.

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

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

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



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

1 SECTION 1. Section 368 of the Penal Code is amended to  
2 read:

3 368. (a) The Legislature finds and declares that crimes  
4 against elders and dependent adults are deserving of special  
5 consideration and protection, not unlike the special protections  
6 provided for minor children, because elders and dependent adults  
7 may be confused, on various medications, mentally or physically  
8 impaired, or incompetent, and therefore less able to protect  
9 themselves, to understand or report criminal conduct, or to testify  
10 in court proceedings on their own behalf.

11 (b) (1) Any person who, under circumstances or conditions  
12 likely to produce great bodily harm or death, willfully causes or  
13 permits any elder or dependent adult to suffer, or inflicts thereon  
14 unjustifiable physical pain or mental suffering, or having the care  
15 or custody of any elder or dependent adult, willfully causes or  
16 permits the person or health of the elder or dependent adult to be  
17 injured, or willfully causes or permits the elder or dependent adult  
18 to be placed in a situation in which his or her person or health is  
19 endangered, is punishable by imprisonment in a county jail not  
20 exceeding one year, or by a fine not to exceed six thousand dollars  
21 (\$6,000), or by both that fine and imprisonment, or by  
22 imprisonment in the state prison for two, three, or four years.

23 (2) If in the commission of an offense described in paragraph  
24 (1), the victim suffers great bodily injury, as defined in Section  
25 12022.7, the defendant shall receive an additional term in the state  
26 prison as follows:

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

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

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

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

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

35 (c) Any person who, under circumstances or conditions other  
36 than those likely to produce great bodily harm or death, willfully  
37 causes or permits any elder or dependent adult to suffer, or inflicts  
38 thereon unjustifiable physical pain or mental suffering, or having



1 the care or custody of any elder or dependent adult, willfully  
2 causes or permits the person or health of the elder or dependent  
3 adult to be injured or willfully causes or permits the elder or  
4 dependent adult to be placed in a situation in which his or her  
5 person or health may be endangered, is guilty of a misdemeanor.  
6 A second or subsequent violation of this subdivision is punishable  
7 by a fine not to exceed two thousand dollars (\$2,000), or by  
8 imprisonment in a county jail not to exceed one year, or by both  
9 that fine and imprisonment.

10 (d) Any person who is not a caretaker who violates any  
11 provision of law proscribing theft, embezzlement, forgery, or  
12 fraud, or who violates Section 530.5 proscribing identity theft,  
13 with respect to the property or personal identifying information of  
14 an elder or a dependent adult is subject to imprisonment in a county  
15 jail not exceeding one year, or in the state prison for two, three, or  
16 four years, when the money, labor, goods, services, or real or  
17 personal property taken or obtained is of a value exceeding four  
18 hundred dollars (\$400); and by a fine not exceeding one thousand  
19 dollars (\$1,000), by imprisonment in a county jail not exceeding  
20 one year, or by both that fine and imprisonment, when the money,  
21 labor, goods, services, or real or personal property taken or  
22 obtained is of a value not exceeding four hundred dollars (\$400).

23 (e) Any caretaker of an elder or a dependent adult who violates  
24 any provision of law proscribing theft, embezzlement, forgery, or  
25 fraud, or who violates Section 530.5 proscribing identity theft,  
26 with respect to the property or personal identifying information of  
27 that elder or dependent adult, is subject to imprisonment in a  
28 county jail not exceeding one year, or in the state prison for two,  
29 three, or four years when the money, labor, goods, services, or real  
30 or personal property taken or obtained is of a value exceeding four  
31 hundred dollars (\$400), and by a fine not exceeding one thousand  
32 dollars (\$1,000), by imprisonment in a county jail not exceeding  
33 one year, or by both that fine and imprisonment, when the money,  
34 labor, goods, services, or real or personal property taken or  
35 obtained is of a value not exceeding four hundred dollars (\$400).

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



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

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

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

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

23 SEC. 2. Section 803 of the Penal Code is amended to read:

24 803. (a) Except as provided in this section, a limitation of  
25 time prescribed in this chapter is not tolled or extended for any  
26 reason.

27 (b) No time during which prosecution of the same person for  
28 the same conduct is pending in a court of this state is a part of a  
29 limitation of time prescribed in this chapter.

30 (c) A limitation of time prescribed in this chapter does not  
31 commence to run until the discovery of an offense described in this  
32 subdivision. This subdivision applies to an offense punishable by  
33 imprisonment in the state prison, a material element of which is  
34 fraud or breach of a fiduciary obligation, the commission of the  
35 crimes of theft or embezzlement upon an elder or dependent adult,  
36 or the basis of which is misconduct in office by a public officer,  
37 employee, or appointee, including, but not limited to, the  
38 following offenses:



- 1 (1) Grand theft of any type, forgery, falsification of public  
2 records, or acceptance of a bribe by a public official or a public  
3 employee.
- 4 (2) A violation of Section 72, 118, 118a, 132, or 134.
- 5 (3) A violation of Section 25540, of any type, or Section 25541  
6 of the Corporations Code.
- 7 (4) A violation of Section 1090 or 27443 of the Government  
8 Code.
- 9 (5) Felony welfare fraud or Medi-Cal fraud in violation of  
10 Section 11483 or 14107 of the Welfare and Institutions Code.
- 11 (6) Felony insurance fraud in violation of Section 548 or 550  
12 of this code or former Section 1871.1, or Section 1871.4, of the  
13 Insurance Code.
- 14 (7) A violation of Section 580, 581, 582, 583, or 584 of the  
15 Business and Professions Code.
- 16 (8) A violation of Section 22430 of the Business and  
17 Professions Code.
- 18 (9) A violation of Section 10690 of the Health and Safety Code.
- 19 (10) A violation of Section 529a.
- 20 (11) A violation of subdivision (d) or (e) of Section 368.
- 21 (12) (A) A violation of subdivision (h) of Section 15630 of the  
22 Welfare and Institutions Code, *pursuant to subparagraph (B)*.
- 23 (B) *A limitation of time for a violation of subdivision (h) of*  
24 *Section 15630 of the Welfare and Institutions Code shall not*  
25 *commence to run until one year after the discovery of the violation.*  
26 *However, in no event shall a limitation of time under this*  
27 *paragraph commence to run more than three years after the*  
28 *offense itself.*
- 29 (d) If the defendant is out of the state when or after the offense  
30 is committed, the prosecution may be commenced as provided in  
31 Section 804 within the limitations of time prescribed by this  
32 chapter, and no time up to a maximum of three years during which  
33 the defendant is not within the state shall be a part of those  
34 limitations.
- 35 (e) A limitation of time prescribed in this chapter does not  
36 commence to run until the offense has been discovered, or could  
37 have reasonably been discovered, with regard to offenses under  
38 Division 7 (commencing with Section 13000) of the Water Code,  
39 under Chapter 6.5 (commencing with Section 25100) of, Chapter  
40 6.7 (commencing with Section 25280) of, or Chapter 6.8



1 (commencing with Section 25300) of, Division 20 of, or Part 4  
2 (commencing with Section 41500) of Division 26 of, the Health  
3 and Safety Code, or under Section 386, or offenses under Chapter  
4 5 (commencing with Section 2000) of Division 2 of, Chapter 9  
5 (commencing with Section 4000) of Division 2 of, Section 6126  
6 of, Chapter 10 (commencing with Section 7301) of Division 3 of,  
7 or Chapter 19.5 (commencing with Section 22440) of Division 8  
8 of, the Business and Professions Code.

9 (f) (1) Notwithstanding any other limitation of time described  
10 in this chapter, a criminal complaint may be filed within one year  
11 of the date of a report to a responsible adult or agency by a child  
12 under 18 years of age that the child is a victim of a crime described  
13 in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

14 (2) For purposes of this subdivision, a “responsible adult” or  
15 “agency” means a person or agency required to report pursuant to  
16 Section 11166. This subdivision applies only if both of the  
17 following occur:

18 (A) The limitation period specified in Section 800 or 801 has  
19 expired.

20 (B) The defendant has committed at least one violation of  
21 Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same  
22 victim within the limitation period specified for that crime in either  
23 Section 800 or 801.

24 (3) (A) This subdivision applies to a cause of action arising  
25 before, on, or after January 1, 1990, the effective date of this  
26 subdivision, and it shall revive any cause of action barred by  
27 Section 800 or 801 if any of the following occurred or occurs:

28 (i) The complaint or indictment was filed on or before January  
29 1, 1997, and it was filed within the time period specified in this  
30 subdivision.

31 (ii) The complaint or indictment is or was filed subsequent to  
32 January 1, 1997, and it is or was filed within the time period  
33 specified within this subdivision.

34 (iii) The victim made the report required by this subdivision to  
35 a responsible adult or agency after January 1, 1990, and a  
36 complaint or indictment was not filed within the time period  
37 specified in this subdivision, but a complaint or indictment is filed  
38 no later than 180 days after the date on which either a published  
39 opinion of the California Supreme Court, deciding whether  
40 retroactive application of this section is constitutional, becomes



1 final or the United States Supreme Court files an opinion deciding  
2 the question of whether retroactive application of this subdivision  
3 is constitutional, whichever occurs first.

4 (iv) The victim made the report required by this subdivision to  
5 a responsible adult or agency after January 1, 1990, and a  
6 complaint or indictment was filed within the time period specified  
7 in this subdivision, but the indictment, complaint, or subsequently  
8 filed information was dismissed, but a new complaint or  
9 indictment is or was filed no later than 180 days after the date on  
10 which either a published opinion of the California Supreme Court,  
11 deciding whether retroactive application of this section is  
12 constitutional, becomes final or the United States Supreme Court  
13 files an opinion deciding the question of whether retroactive  
14 application of this subdivision is constitutional, whichever occurs  
15 first.

16 (B) (i) If the victim made the report required by this  
17 subdivision to a responsible adult or agency after January 1, 1990,  
18 and a complaint or indictment was filed within the time period  
19 specified in this subdivision, but the indictment, complaint, or  
20 subsequently filed information was dismissed, a new complaint or  
21 indictment may be filed notwithstanding any other provision of  
22 law, including, but not limited to, subdivision (c) of Section 871.5  
23 and subdivision (b) of Section 1238.

24 (ii) An order dismissing an action filed under this subdivision,  
25 which is entered or becomes effective at any time prior to 180 days  
26 after the date on which either a published opinion of the California  
27 Supreme Court, deciding the question of whether retroactive  
28 application of this section is constitutional, becomes final or the  
29 United States Supreme Court files an opinion deciding the  
30 question of whether retroactive application of this subdivision is  
31 constitutional, whichever occurs first, shall not be considered an  
32 order terminating an action within the meaning of Section 1387.

33 (iii) Any ruling regarding the retroactivity of this subdivision  
34 or its constitutionality made in the course of the previous  
35 proceeding, including any review proceeding, shall not be binding  
36 upon refiling.

37 (g) (1) Notwithstanding any other limitation of time described  
38 in this chapter, a criminal complaint may be filed within one year  
39 of the date of a report to a California law enforcement agency by  
40 a person of any age alleging that he or she, while under the age of



1 18 years, was the victim of a crime described in Section 261, 286,  
2 288, 288a, 288.5, 289, or 289.5.

3 (2) This subdivision applies only if both of the following occur:

4 (A) The limitation period specified in Section 800 or 801 has  
5 expired.

6 (B) The crime involved substantial sexual conduct, as  
7 described in subdivision (b) of Section 1203.066, excluding  
8 masturbation that is not mutual, and there is independent evidence  
9 that clearly and convincingly corroborates the victim's allegation.  
10 No evidence may be used to corroborate the victim's allegation  
11 that otherwise would be inadmissible during trial. Independent  
12 evidence does not include the opinions of mental health  
13 professionals.

14 (3) (A) This subdivision applies to a cause of action arising  
15 before, on, or after January 1, 1994, the effective date of this  
16 subdivision, and it shall revive any cause of action barred by  
17 Section 800 or 801 if any of the following occurred or occurs:

18 (i) The complaint or indictment was filed on or before January  
19 1, 1997, and it was filed within the time period specified in this  
20 subdivision.

21 (ii) The complaint or indictment is or was filed subsequent to  
22 January 1, 1997, and it is or was filed within the time period  
23 specified within this subdivision.

24 (iii) The victim made the report required by this subdivision to  
25 a law enforcement agency after January 1, 1994, and a complaint  
26 or indictment was not filed within the time period specified in this  
27 subdivision, but a complaint or indictment is filed no later than 180  
28 days after the date on which either a published opinion of the  
29 California Supreme Court, deciding the question of whether  
30 retroactive application of this subdivision is constitutional,  
31 becomes final or the United States Supreme Court files an opinion  
32 deciding the question of whether retroactive application of this  
33 subdivision is constitutional, whichever occurs first.

34 (iv) The victim made the report required by this subdivision to  
35 a law enforcement agency after January 1, 1994, and a complaint  
36 or indictment was filed within the time period specified in this  
37 subdivision, but the indictment, complaint, or subsequently filed  
38 information was dismissed, but a new complaint or indictment is  
39 filed no later than 180 days after the date on which either a  
40 published opinion of the California Supreme Court, deciding the



1 question of whether retroactive application of this subdivision is  
2 constitutional, becomes final or the United States Supreme Court  
3 files an opinion deciding the question of whether retroactive  
4 application of this subdivision is constitutional, whichever occurs  
5 first.

6 (B) (i) If the victim made the report required by this  
7 subdivision to a law enforcement agency after January 1, 1994,  
8 and a complaint or indictment was filed within the time period  
9 specified in this subdivision, but the indictment, complaint, or  
10 subsequently filed information was dismissed, a new complaint or  
11 indictment may be filed notwithstanding any other provision of  
12 law, including, but not limited to, subdivision (c) of Section 871.5  
13 and subdivision (b) of Section 1238.

14 (ii) An order dismissing an action filed under this subdivision,  
15 which is entered or becomes effective at any time prior to 180 days  
16 after the date on which either a published opinion of the California  
17 Supreme Court, deciding the question of whether retroactive  
18 application of this section is constitutional, becomes final or the  
19 United States Supreme Court files an opinion deciding the  
20 question of whether retroactive application of this subdivision is  
21 constitutional, whichever occurs first, shall not be considered an  
22 order terminating an action within the meaning of Section 1387.

23 (iii) Any ruling regarding the retroactivity of this subdivision  
24 or its constitutionality made in the course of the previous  
25 proceeding, by any trial court or any intermediate appellate court,  
26 shall not be binding upon refiling.

27 (h) (1) Notwithstanding any other limitation of time described  
28 in this chapter, a criminal complaint may be filed within one year  
29 of the date of a report to a California law enforcement agency by  
30 a person under 21 years of age, alleging that he or she, while under  
31 18 years of age, was the victim of a crime described in Section 261,  
32 286, 288, 288a, 288.5, 289, or 289.5.

33 (2) This subdivision applies only if both of the following occur:

34 (A) The limitation period specified in Section 800 or 801 has  
35 expired.

36 (B) The crime involved substantial sexual conduct, as  
37 described in subdivision (b) of Section 1203.066, excluding  
38 masturbation that is not mutual, and there is independent evidence  
39 that corroborates the victim's allegation. No evidence may be used  
40 to corroborate the victim's allegation that otherwise would be



1 inadmissible during trial. Independent evidence does not include  
2 the opinions of mental health professionals.

3 (3) This subdivision applies to a cause of action arising before,  
4 on, or after January 1, 2002, the effective date of this subdivision,  
5 and it shall revive any cause of action barred by Section 800 or 801  
6 if the complaint or indictment was filed within the time period  
7 specified by this subdivision.

8 (i) (1) Notwithstanding the limitation of time described in  
9 Section 800, the limitations period for commencing prosecution  
10 for a felony offense described in subparagraph (A) of paragraph  
11 (2) of subdivision (a) of Section 290, where the limitations period  
12 set forth in Section 800 has not expired as of January 1, 2001, or  
13 the offense is committed on or after January 1, 2001, shall be 10  
14 years from the commission of the offense, or one year from the  
15 date on which the identity of the suspect is conclusively  
16 established by DNA testing, whichever is later, provided,  
17 however, that the one-year period from the establishment of the  
18 identity of the suspect shall only apply when either of the  
19 following conditions is met:

20 (A) For an offense committed prior to January 1, 2001,  
21 biological evidence collected in connection with the offense is  
22 analyzed for DNA type no later than January 1, 2004.

23 (B) For an offense committed on or after January 1, 2001,  
24 biological evidence collected in connection with the offense is  
25 analyzed for DNA type no later than two years from the date of the  
26 offense.

27 (2) In the event the conditions set forth in subparagraph (A) or  
28 (B) of paragraph (1) are not met, the limitations period for  
29 commencing prosecution for a felony offense described in  
30 subparagraph (A) of paragraph (2) of subdivision (a) of Section  
31 290, where the limitations period set forth in Section 800 has not  
32 expired as of January 1, 2001, or the offense is committed on or  
33 after January 1, 2001, shall be 10 years from the commission of the  
34 offense.

35 (3) For purposes of this section, “DNA” means  
36 deoxyribonucleic acid.

37 (j) For any crime, the proof of which depends substantially  
38 upon evidence that was seized under a warrant, but which is  
39 unavailable to the prosecuting authority under the procedures  
40 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th



1 703, *People v. Superior Court (Bauman & Rose)* (1995) 37  
2 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to  
3 claims of evidentiary privilege or attorney work product, the  
4 limitation of time prescribed in this chapter shall be tolled from the  
5 time of the seizure until final disclosure of the evidence to the  
6 prosecuting authority. Nothing in this section otherwise affects the  
7 definition or applicability of any evidentiary privilege or attorney  
8 work product.

9 (k) (1) In a criminal investigation involving child sexual abuse  
10 as described in subdivision (g) or (h), when the limitations period  
11 set forth therein has not expired, that period shall be tolled from  
12 the time a party initiates litigation challenging a grand jury  
13 subpoena until the end of that litigation, including any associated  
14 writ or appellate proceeding, or until the final disclosure of  
15 evidence to the investigating or prosecuting agency, if that  
16 disclosure is ordered pursuant to the subpoena after the litigation.

17 (2) Nothing in this subdivision affects the definition or  
18 applicability of any evidentiary privilege.

19 (3) This subdivision shall not apply where a court finds that the  
20 grand jury subpoena was issued or caused to be issued in bad faith.

21 (l) As used in subdivisions (f), (g), and (h), Section 289.5 refers  
22 to the statute enacted by Chapter 293 of the Statutes of 1991  
23 relating to penetration by an unknown object.

24 SEC. 3. Section 15610.30 of the Welfare and Institutions  
25 Code is amended to read:

26 15610.30. (a) “Financial abuse” of an elder or dependent  
27 adult occurs when a person or entity does any of the following:

28 (1) Wrongfully takes, secretes, appropriates, or retains real or  
29 personal property of an elder or dependent adult.

30 (2) Assists in wrongfully taking, secreting, appropriating, or  
31 retaining real or personal property of an elder or dependent adult.

32 (b) A person or entity shall be deemed to have acted wrongfully  
33 if the person or entity knew or reasonably should have known that  
34 the elder or dependent adult had the right to have the property  
35 transferred or made readily available to the elder or dependent  
36 adult or to his or her representative.

37 (c) For purposes of this section, “representative” means a  
38 person or entity that is either of the following:

39 (1) A conservator, trustee, or other representative of the estate  
40 of an elder or dependent adult.



1 (2) An attorney-in-fact of an elder or dependent adult who acts  
2 within the authority of the power of attorney.

3 SEC. 4. Section 15630 of the Welfare and Institutions Code  
4 is amended to read:

5 15630. (a) ~~(1)~~—Any person who has assumed full or  
6 intermittent responsibility for care or custody of an elder or  
7 dependent adult, whether or not that person receives  
8 compensation, including administrators, supervisors, and any  
9 licensed staff of a public or private facility that provides care or  
10 services for elder or dependent adults, or any elder or dependent  
11 adult care custodian, health practitioner, clergy member, or  
12 employee of a county adult protective services agency or a local  
13 law enforcement agency, is a mandated reporter.

14 ~~(2) Any financial institution subject to regulation by the  
15 Commissioner of Financial Institutions, or in the case of a  
16 federally chartered financial institution, subject to regulation by the  
17 Comptroller of the Currency, the Office of Thrift Supervision, or  
18 the National Credit Union Administration, with respect to elder  
19 and dependent adult financial abuse, is a mandated reporter.~~

20 (b) (1) Any mandated reporter who, in his or her professional  
21 capacity, or within the scope of his or her employment, has  
22 observed or has knowledge of an incident that reasonably appears  
23 to be physical abuse, abandonment, abduction, isolation, financial  
24 abuse, or neglect, or is told by an elder or dependent adult that he  
25 or she has experienced behavior, including an act or omission,  
26 constituting physical abuse, abandonment, abduction, isolation,  
27 financial abuse, or neglect, or reasonably suspects that abuse, shall  
28 report the known or suspected instance of abuse by telephone  
29 immediately or as soon as practicably possible, and by written  
30 report sent within two working days, as follows:

31 (A) If the abuse has occurred in a long-term care facility, except  
32 a state mental health hospital or a state developmental center, the  
33 report shall be made to the local ombudsman or the local law  
34 enforcement agency.

35 Except in an emergency, the local ombudsman and the local law  
36 enforcement agency shall, as soon as practicable, do all of the  
37 following:

38 (i) Report to the State Department of Health Services any case  
39 of known or suspected abuse occurring in a long-term health care



1 facility, as defined in subdivision (a) of Section 1418 of the Health  
2 and Safety Code.

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

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

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

14 (B) If the suspected or alleged abuse occurred in a state mental  
15 hospital or a state developmental center, the report shall be made  
16 to designated investigators of the State Department of Mental  
17 Health or the State Department of Developmental Services, or to  
18 the local law enforcement agency.

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

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

26 (2) (A) A mandated reporter who is a clergy member who  
27 acquires knowledge or reasonable suspicion of elder or dependent  
28 adult abuse during a penitential communication is not subject to  
29 paragraph (1). For purposes of this subdivision, “penitential  
30 communication” means a communication that is intended to be in  
31 confidence, including, but not limited to, a sacramental confession  
32 made to a clergy member who, in the course of the discipline or  
33 practice of his or her church, denomination, or organization is  
34 authorized or accustomed to hear those communications and under  
35 the discipline tenets, customs, or practices of his or her church,  
36 denomination, or organization, has a duty to keep those  
37 communications secret.

38 (B) Nothing in this subdivision shall be construed to modify or  
39 limit a clergy member’s duty to report known or suspected elder  
40 and dependent adult abuse when he or she is acting in the capacity



1 of a care custodian, health practitioner, or employee of an adult  
2 protective agency.

3 (C) Notwithstanding any other provision in this section, a  
4 clergy member who is not regularly employed on either a full-time  
5 or part-time basis in a long-term care facility or does not have care  
6 or custody of an elder or dependent adult shall not be responsible  
7 for reporting abuse or neglect that is not reasonably observable or  
8 discernible to a reasonably prudent person having no specialized  
9 training or experience in elder or dependent care.

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

15 (i) The mandated reporter has been told by an elder or  
16 dependent adult that he or she has experienced behavior  
17 constituting physical abuse, abandonment, abduction, isolation,  
18 financial abuse, or neglect.

19 (ii) The mandated reporter is not aware of any independent  
20 evidence that corroborates the statement that the abuse has  
21 occurred.

22 (iii) The elder or dependent adult has been diagnosed with a  
23 mental illness or dementia, or is the subject of a court-ordered  
24 conservatorship because of a mental illness or dementia.

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

29 (B) This paragraph shall not be construed to impose upon  
30 mandated reporters a duty to investigate a known or suspected  
31 incident of abuse and shall not be construed to lessen or restrict any  
32 existing duty of mandated reporters.

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

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

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



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

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

5 (B) This paragraph shall not be construed to require a mandated  
6 reporter to seek, nor to preclude a mandated reporter from seeking,  
7 information regarding a known or suspected incident of abuse  
8 prior to reporting. This paragraph shall apply only to those  
9 categories of mandated reporters that the State Department of  
10 Health Services determines, upon approval by the Bureau of  
11 Medi-Cal Fraud and Elder Abuse and the state long-term care  
12 ombudsman, have access to plans of care and have the training and  
13 experience necessary to determine whether the conditions  
14 specified in this section have been met.

15 (c) (1) Any mandated reporter who has knowledge, or  
16 reasonably suspects, that types of elder or dependent adult abuse  
17 for which reports are not mandated have been inflicted upon an  
18 elder or dependent adult, or that his or her emotional well-being  
19 is endangered in any other way, may report the known or suspected  
20 instance of abuse.

21 (2) If the suspected or alleged abuse occurred in a long-term  
22 care facility other than a state mental health hospital or a state  
23 developmental center, the report may be made to the long-term  
24 care ombudsman program. Except in an emergency, the local  
25 ombudsman shall report any case of known or suspected abuse to  
26 the State Department of Health Services and any case of known or  
27 suspected criminal activity to the Bureau of Medi-Cal Fraud and  
28 Elder Abuse, as soon as is practicable.

29 (3) If the suspected or alleged abuse occurred in a state mental  
30 health hospital or a state developmental center, the report may be  
31 made to the designated investigator of the State Department of  
32 Mental Health or the State Department of Developmental Services  
33 or to a local law enforcement agency or to the local ombudsman.  
34 Except in an emergency, the local ombudsman and the local law  
35 enforcement agency shall report any case of known or suspected  
36 criminal activity to the Bureau of Medi-Cal Fraud and Elder  
37 Abuse, as soon as is practicable.

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



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

4 (d) When two or more mandated reporters are present and  
5 jointly have knowledge or reasonably suspect that types of abuse  
6 of an elder or a dependent adult for which a report is or is not  
7 mandated have occurred, and when there is agreement among  
8 them, the telephone report may be made by a member of the team  
9 selected by mutual agreement, and a single report may be made  
10 and signed by the selected member of the reporting team. Any  
11 member who has knowledge that the member designated to report  
12 has failed to do so shall thereafter make the report.

13 (e) A telephone report of a known or suspected instance of elder  
14 or dependent adult abuse shall include, if known, the name of the  
15 person making the report, the name and age of the elder or  
16 dependent adult, the present location of the elder or dependent  
17 adult, the names and addresses of family members or any other  
18 person responsible for the elder or dependent adult's care, the  
19 nature and extent of the elder or dependent adult's condition, the  
20 date of the incident, and any other information, including  
21 information that led that person to suspect elder or dependent adult  
22 abuse, as requested by the agency receiving the report.

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

30 (g) (1) Whenever this section requires a county adult  
31 protective services agency to report to a law enforcement agency,  
32 the law enforcement agency shall, immediately upon request,  
33 provide a copy of its investigative report concerning the reported  
34 matter to that county adult protective services agency.

35 (2) Whenever this section requires a law enforcement agency  
36 to report to a county adult protective services agency, the county  
37 adult protective services agency shall, immediately upon request,  
38 provide to that law enforcement agency a copy of its investigative  
39 report concerning the reported matter.



1 (3) The requirement to disclose investigative reports pursuant  
 2 to this subdivision shall not include the disclosure of social  
 3 services records or case files that are confidential, nor shall this  
 4 subdivision be construed to allow disclosure of any reports or  
 5 records if the disclosure would be prohibited by any other  
 6 provision of state or federal law.

7 (h) Failure to report physical abuse, abandonment, abduction,  
 8 isolation, financial abuse, or neglect of an elder or dependent adult,  
 9 in violation of this section, is a misdemeanor, punishable by not  
 10 more than six months in the county jail, by a fine of not more than  
 11 one thousand dollars (\$1,000), or by both that fine and  
 12 imprisonment. Any mandated reporter who willfully fails to report  
 13 physical abuse, abandonment, abduction, isolation, financial  
 14 abuse, or neglect of an elder or dependent adult, in violation of this  
 15 section, where that abuse results in death or great bodily injury,  
 16 shall be punished by not more than one year in a county jail, by a  
 17 fine of not more than five thousand dollars (\$5,000), or by both  
 18 that fine and imprisonment.

19 *SEC. 4.5. Section 15630.2 is added to the Welfare and*  
 20 *Institutions Code, to read:*

21 *15630.2. Any financial institution subject to regulation by the*  
 22 *Commissioner of Financial Institutions, or in the case of a*  
 23 *federally chartered financial institution, subject to regulation by the*  
 24 *Comptroller of the Currency, the Office of Thrift Supervision, or*  
 25 *the National Credit Union Administration is a mandated reporter,*  
 26 *with respect to elder and dependent adult financial abuse only.*

27 *SEC. 5. Section 15657 of the Welfare and Institutions Code*  
 28 *is amended to read:*

29 *15657. Where it is proven by clear and convincing evidence*  
 30 *that a defendant is liable for physical abuse as defined in Section*  
 31 *15610.63, or neglect as defined in Section 15610.57, ~~or where it~~*  
 32 *is proven by a preponderance of the evidence that a defendant is*  
 33 *liable for financial abuse as defined in Section 15610.30, ~~and~~*  
 34 *where it is also proven by a preponderance of the evidence that the*  
 35 *and that the defendant has been guilty of or has demonstrated or*  
 36 *exhibited recklessness, oppression, fraud, or malice in the*  
 37 *commission of this abuse, or where it is proven by a preponderance*  
 38 *of the evidence that a defendant is liable for financial abuse, as*  
 39 *defined in Section 15610.30, and that the defendant has been guilty*  
 40 *of or has demonstrated or exhibited recklessness, oppression,*



1 *fraud, or malice in the commission of this abuse, the following*  
2 *shall apply*, in addition to all other remedies otherwise provided by  
3 law:

4 (a) The court shall award to the plaintiff reasonable attorney’s  
5 fees and costs. The term “costs” includes, but is not limited to,  
6 reasonable fees for the services of a conservator, if any, devoted to  
7 the litigation of a claim brought under this article.

8 (b) The limitations imposed by Section 337.34 of the Code of  
9 Civil Procedure on the damages recoverable shall not apply.  
10 However, the damages recovered shall not exceed the damages  
11 permitted to be recovered pursuant to subdivision (b) of Section  
12 3333.2 of the Civil Code.

13 (c) The standards set forth in subdivision (b) of Section 3294  
14 of the Civil Code regarding the imposition of punitive damages on  
15 an employer based upon the acts of an employee shall be satisfied  
16 before any damages or attorney’s fees permitted under this section  
17 may be imposed against an employer.

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

