

Senate Bill No. 110

CHAPTER 617

An act to amend Sections 11163.6, 11174.5, 11174.7, 13515, 13823.16, 13836.1, and 14213 of, to amend the heading of Article 2.7 (commencing with Section 11174.4) of Chapter 2 of Title 1 of Part 4 of, to add Section 368.5 to, and to add a heading as Chapter 13 (commencing with Section 368) to Title 9 of Part 1 of, the Penal Code, and to amend Sections 4427.5, 15650, 15654, and 15763 of the Welfare and Institutions Code, relating to people with disabilities.

[Approved by Governor September 30, 2010. Filed with
Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 110, Liu. People with disabilities: victims of crime.

Existing law addresses aspects of the jurisdiction of state agencies and law enforcement in regard to long-term care facilities and elder and dependent adult abuse, as specified.

This bill would further specify the jurisdiction of various state agencies and of law enforcement in regard to investigating those facilities and that conduct.

Existing law regulates the investigation and prosecution of crimes against a dependent adult, which is defined to include a person who is between 18 and 64 years of age, inclusive, and who has a physical or mental limitation which restricts his or her ability, or substantially restricts his or her ability, to carry out normal activities or to protect his or her rights, including, but not limited to, a person who has a physical or developmental disability or whose physical or mental abilities have diminished, or significantly diminished, because of age. Under existing law, the term also includes any person between 18 and 64 years of age, inclusive, who is admitted as an inpatient to certain 24-hour health facilities.

Existing law authorizes any county to establish an interagency elder death review team to assist local agencies in identifying and reviewing suspicious elder deaths and facilitating communications among persons who perform autopsies and persons involved in the investigation or reporting of elder abuse or neglect. Existing law establishes procedures for the sharing or disclosure of information by elder death review teams.

This bill would rename these teams "elder and dependent adult death review teams" and would expand the authority of these teams to cover dependent adult death, abuse, and neglect, as specified.

Existing law provides for the training of peace officers.

This bill would require the Commission on Peace Officer Standards and Training and the Bureau of Medi-Cal Fraud and Elder Abuse to consult

with each other and with other subject matter experts when producing new or updated training materials relating to elder and dependent adult abuse, as specified.

Existing law provides for the creation of an advisory committee responsible for developing a course of training for district attorneys in the investigation and prosecution of sexual assault cases, child sexual exploitation cases, and child sexual abuse cases. Existing law requires that the courses shall include training in the unique emotional trauma experienced by victims of these crimes. Existing law requires that the committee shall consist of 11 members of which 6 shall be public members appointed by the Commission on the Status of Women, as specified.

This bill would require that one of the appointees of the Commission on the Status of Women be an expert on crimes against persons with disabilities or other representative of the disability community, appointed as specified.

Existing law provides that each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, 7 days per week, to reports of abuse of an elder or dependent adult, as specified.

This bill would make technical changes to those provisions.

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

SECTION 1. This act shall be known and may be cited as the Crime Victims with Disabilities Act of 2010.

SEC. 2. The heading of Chapter 13 (commencing with Section 368) is added to Title 9 of Part 1 of the Penal Code, immediately preceding Section 368, to read:

CHAPTER 13. CRIMES AGAINST ELDERS, DEPENDENT ADULTS, AND
PERSONS WITH DISABILITIES

SEC. 3. Section 368.5 is added to the Penal Code, to read:

368.5. (a) Local law enforcement agencies and state law enforcement agencies with jurisdiction shall have concurrent jurisdiction to investigate elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities.

(b) Adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect, and may assist local law enforcement agencies in criminal investigations at the law enforcement agencies' request, provided, however, that law enforcement agencies shall retain exclusive responsibility for criminal investigations, any provision of law to the contrary notwithstanding.

SEC. 4. Section 11163.6 of the Penal Code is amended to read:

11163.6. In order to ensure consistent and uniform results, data may be collected and summarized by the domestic violence death review teams to

show the statistical occurrence of domestic violence deaths in the team's county that occur under the following circumstances:

(a) The deceased was a victim of a homicide committed by a current or former spouse, fiancé, or dating partner.

(b) The deceased was the victim of a suicide, was the current or former spouse, fiancé, or dating partner of the perpetrator and was also the victim of previous acts of domestic violence.

(c) The deceased was the perpetrator of the homicide of a former or current spouse, fiancé, or dating partner and the perpetrator was also the victim of a suicide.

(d) The deceased was the perpetrator of the homicide of a former or current spouse, fiancé, or dating partner and the perpetrator was also the victim of a homicide related to the domestic homicide incident.

(e) The deceased was a child of either the homicide victim or the perpetrator, or both.

(f) The deceased was a current or former spouse, fiancé, or dating partner of the current or former spouse, fiancé, or dating partner of the perpetrator.

(g) The deceased was a law enforcement officer, emergency medical personnel, or other agency responding to a domestic violence incident.

(h) The deceased was a family member, other than identified above, of the perpetrator.

(i) The deceased was the perpetrator of the homicide of a family member, other than identified above.

(j) The deceased had a disability and the homicide was related to domestic violence.

(k) The deceased was a person not included in the above categories and the homicide was related to domestic violence.

SEC. 5. The heading of Article 2.7 (commencing with Section 11174.4) of Chapter 2 of Title 1 of Part 4 of the Penal Code is amended to read:

Article 2.7. Elder and Dependent Adult Death Review Teams

SEC. 6. Section 11174.5 of the Penal Code is amended to read:

11174.5. (a) Each county may establish an interagency elder and dependent adult death review team to assist local agencies in identifying and reviewing suspicious elder and dependent adult deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in elder and dependent adult abuse or neglect cases.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on elders and dependent adults to assist coroners and other persons who perform autopsies in the identification of elder and dependent adult abuse or neglect, in the determination of whether elder or dependent adult abuse or neglect contributed to death or whether elder or dependent adult abuse or neglect had occurred prior to, but was not the actual cause of, death, and in the proper written reporting procedures

for elder and dependent adult abuse or neglect, including the designation of the cause and mode of death.

(c) As used in this section, the term “dependent adult” has the same meaning as in Section 368, and applies regardless of whether the person lived independently.

SEC. 7. Section 11174.7 of the Penal Code is amended to read:

11174.7. (a) An oral or written communication or a document shared within or produced by an elder and dependent adult death review team related to an elder or dependent adult death review is confidential and not subject to disclosure or discoverable by another third party.

(b) An oral or written communication or a document provided by a third party to an elder and dependent adult death review team, or between a third party and an elder and dependent adult death review team, is confidential and not subject to disclosure or discoverable by a third party.

(c) Notwithstanding subdivisions (a) and (b), recommendations of an elder and dependent adult death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the elder and dependent adult death review team.

SEC. 8. Section 13515 of the Penal Code is amended to read:

13515. (a) Every city police officer or deputy sheriff at a supervisory level and below who is assigned field or investigative duties shall complete an elder and dependent adult abuse training course certified by the Commission on Peace Officer Standards and Training within 18 months of assignment to field duties. Completion of the course may be satisfied by telecourse, video training tape, or other instruction. The training shall, at a minimum, include all of the following subjects:

- (1) Relevant laws.
- (2) Recognition of elder and dependent adult abuse.
- (3) Reporting requirements and procedures.
- (4) Neglect of elders and dependent adults.
- (5) Fraud of elders and dependent adults.
- (6) Physical abuse of elders and dependent adults.
- (7) Psychological abuse of elders and dependent adults.
- (8) The role of the local adult protective services and public guardian offices.

(b) When producing new or updated training materials pursuant to this section, the commission shall consult with the Bureau of Medi-Cal Fraud and Elder Abuse and other subject matter experts. Any new or updated training materials shall address all of the following:

(1) The jurisdiction and responsibility of law enforcement agencies pursuant to Section 368.5.

(2) The fact that the protected classes of “dependent person” as defined in Section 288 and “dependent adult” as defined in Section 368 include many persons with disabilities, regardless of the fact that most of those persons live independently.

(3) Other relevant information and laws.

(c) The commission also may inform the law enforcement agencies of other relevant training materials.

SEC. 9. Section 13823.16 of the Penal Code is amended to read:

13823.16. (a) The Comprehensive Statewide Domestic Violence Program established pursuant to Section 13823.15 shall be collaboratively administered by the California Emergency Management Agency (Cal EMA) and an advisory council. The membership of the (Cal EMA) Domestic Violence Advisory Council shall consist of experts in the provision of either direct or intervention services to victims of domestic violence and their children, within the scope and intention of the Comprehensive Statewide Domestic Violence Assistance Program.

(b) The membership of the council shall consist of domestic violence victims' advocates, battered women service providers, at least one representative of service providers serving the lesbian, gay, bisexual, and transgender community in connection with domestic violence, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence victims' advocates or battered women service providers. It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state, including people with disabilities. The council shall be composed of no more than 13 voting members and two nonvoting ex officio members who shall be appointed, as follows:

(1) Seven voting members shall be appointed by the Governor, including at least one person recommended by the federally recognized state domestic violence coalition.

(2) Three voting members shall be appointed by the Speaker of the Assembly.

(3) Three voting members shall be appointed by the Senate Committee on Rules.

(4) Two nonvoting ex officio members shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with the council and participate in its activities to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

(c) The Cal EMA shall collaborate closely with the council in developing funding priorities, framing the request for proposals, and soliciting proposals.

(d) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 10. Section 13836.1 of the Penal Code is amended to read:

13836.1. (a) The committee shall consist of 11 members. Five shall be appointed by the executive director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, and shall include three district attorneys or assistant or deputy district attorneys, one representative of a city police department or a sheriff or a representative of

a sheriff's department, and one public defender or assistant or deputy public defender of a county. Six shall be public members appointed by the Commission on the Status of Women, and shall include one representative of a rape crisis center, one expert on crimes against persons with disabilities or other representative of the disability community, and one medical professional experienced in dealing with sexual assault trauma victims. The committee members shall represent the points of view of diverse ethnic and language groups.

(b) (1) The Commission on the Status of Women shall appoint the expert on crimes against persons with disabilities or other representative of the disability community after consulting the state protection and advocacy agency, as defined in Section 4900 of the Welfare and Institutions Code.

(2) The requirement that the Commission on the Status of Women appoint an expert on crimes against victims with disabilities or other representative of the disability community shall take effect upon the occurrence of the first vacancy for a member appointed by the commission, other than the member who represents a rape crisis center or the member who is a medical professional, on or after January 1, 2011.

(c) Members of the committee shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties. Staff support for the committee shall be provided by the agency or agencies designated by the Director of Finance pursuant to Section 13820.

SEC. 11. Section 14213 of the Penal Code is amended to read:

14213. (a) As used in this title, "missing person" includes, but is not limited to, a child who has been taken, detained, concealed, enticed away, or retained by a parent in violation of Chapter 4 (commencing with Section 277) of Title 9 of Part 1. It also includes any child who is missing voluntarily or involuntarily, or under circumstances not conforming to his or her ordinary habits or behavior and who may be in need of assistance.

(b) As used in this title, "evidence that the person is at risk" includes, but is not limited to, evidence or indications of any of the following:

- (1) The person missing is the victim of a crime or foul play.
- (2) The person missing is in need of medical attention.
- (3) The person missing has no pattern of running away or disappearing.
- (4) The person missing may be the victim of parental abduction.
- (5) The person missing is mentally impaired.

(c) As used in this title, "child" is any person under the age of 18.

(d) As used in this title, "center" means the Violent Crime Information Center.

(e) As used in this title, "dependent adult" is any person described in subdivision (h) of Section 368, regardless of whether the person lives independently.

(f) As used in this title, "dental or medical records or X-rays," include all those records or X-rays which are in the possession of a dentist, physician and surgeon, or medical facility.

SEC. 12. Section 4427.5 of the Welfare and Institutions Code is amended to read:

4427.5. (a) (1) A developmental center shall immediately report all resident deaths and serious injuries of unknown origin to the appropriate local law enforcement agency, which may, at its discretion, conduct an independent investigation.

(2) The reporting requirements of this subdivision are in addition to, and do not substitute for, the reporting requirements of mandated reporters.

(b) The department shall do both of the following:

(1) Annually provide written information to every developmental center employee regarding all of the following:

(A) The statutory and departmental requirements for mandatory reporting of suspected or known abuse.

(B) The rights and protections afforded to individuals' reporting of suspected or known abuse.

(C) The penalties for failure to report suspected or known abuse.

(D) The telephone numbers for reporting suspected or known abuse or neglect to designated investigators of the department and to local law enforcement agencies.

(2) On or before August 1, 2001, in consultation with employee organizations, advocates, consumers, and family members, develop a poster that encourages staff, residents, and visitors to report suspected or known abuse and provides information on how to make these reports.

SEC. 13. Section 15650 of the Welfare and Institutions Code is amended to read:

15650. (a) Investigation of reports of known or suspected instances of abuse in long-term care facilities shall be the responsibility of the bureau, the local law enforcement agency, and the long-term care ombudsman program.

(b) Investigations of known or suspected instances of abuse outside of long-term care facilities shall be the responsibility of the county adult protective services agency, unless another public agency is given responsibility for investigation in that jurisdiction, and the local law enforcement agency.

(c) The investigative responsibilities set forth in this section are in addition to, and not in derogation of or substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Health Services Licensing and Certification Division and their authorized representatives.

(d) Other public agencies involved in the investigation of abuse or advocacy of respective client populations, or both, include, but shall not be limited to, the State Department of Mental Health and the State Department of Developmental Services. Other public agencies shall conduct or assist in, or both, the investigation of reports of abuse of elder and dependent adults within their jurisdiction in conjunction with county adult protective services, local ombudsman programs and local law enforcement agencies.

(e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

(f) Each local ombudsman program shall maintain an inventory of all public and private agencies available to assist long-term care residents who are victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer cases of abuse in the event that another agency has jurisdiction over the resident, the abuse is verified and further investigation is needed by a law enforcement or licensing agency, or the program does not have sufficient resources to provide immediate assistance. The intent of this section is to acknowledge that ombudsman responsibility in abuse cases is to receive reports, determine the validity of reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.

SEC. 14. Section 15654 of the Welfare and Institutions Code is amended to read:

15654. (a) As described in subdivision (h) of Section 12528 of the Government Code, the bureau shall offer training programs to local law enforcement and prosecutorial personnel in investigating and prosecuting crimes against elders and dependent adults, and to the State Department of Health Care Services, the State Department of Social Services, the county adult protective services agencies and to the long-term care ombudsman program in evaluating and documenting criminal abuse against elders and dependent adults.

(b) When producing new or updated training materials pursuant to this section, the bureau shall consult with the Commission on Peace Officer Standards and Training and other subject matter experts. Any new or updated training materials shall address all of the following:

(1) The jurisdiction and responsibility of law enforcement agencies pursuant to Section 368.5 of the Penal Code.

(2) The fact that the protected classes of “dependent person” as defined in Section 288 of the Penal Code and “dependent adult” as defined in Section 368 of the Penal Code include many persons with disabilities, regardless of the fact that most of those persons live independently.

(3) Other relevant information and laws.

(c) When the bureau offers or provides new or updated training materials pursuant to this section, the bureau also may inform the agencies of other relevant training materials.

SEC. 15. Section 15763 of the Welfare and Institutions Code is amended to read:

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, to new reports involving immediate life threats and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues, assessment of the person's concerns, needs, strengths, problems, and limitations, stabilization and linking with community services, and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams to develop interagency treatment strategies, to ensure maximum coordination with existing community resources, to ensure maximum access on behalf of elders and dependent adults, and to avoid duplication of efforts.

(b) (1) A county shall respond immediately to any report of imminent danger to an elder or dependent adult in other than a long-term care facility, as defined in Section 9701 of the Welfare and Institutions Code, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. Except as specified in paragraph (2), the county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

(2) An immediate or 10-day in-person response is not required when the county, based upon an evaluation of risk, determines and documents that the elder or dependent adult is not in imminent danger and that an immediate or 10-day in-person response is not necessary to protect the health or safety of the elder or dependent adult.

(3) The State Department of Social Services, in consultation with the County Welfare Directors Association, shall develop requirements for implementation of paragraph (2), including, but not limited to, guidelines for determining appropriate application of this section and any applicable documentation requirements.

(4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement the requirements developed pursuant to paragraph (3) by means of all-county letters or similar instructions prior to adopting regulations for that purpose. Thereafter, the department shall adopt regulations in accordance

with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A county shall not be required to report or respond to a report pursuant to subdivision (b) that involves danger to an elder or dependent adult residing in any facility for the incarceration of prisoners that is operated by or under contract to the Federal Bureau of Prisons, the Department of Corrections and Rehabilitation, a county sheriff's department, a county probation department, a city police department, or any other law enforcement agency when the abuse reportedly has occurred in that facility.

(d) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the person's concerns and needs on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for clients and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking with community services.

(8) Monitoring and followup.

(9) Reassessments, as appropriate.

(e) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(f) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not limited to, adult protective services, law enforcement, probation departments, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.

(g) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and

electrical repair, blankets, linens, and other household goods, advocacy with utility companies, and emergency response units.

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