STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

January 20, 1995

ALL-COUNTY LETTER NO. 95-02

TO: ALL-COUNTY WELFARE DIRECTORS
ADULT PROTECTIVE SERVICES (APS)
PROGRAMS

REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order or Settlement Agreement
[ ] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

SUBJECT: ELDER AND DEPENDENT ADULT ABUSE REPORTING LAW

SB1681

Senate Bill (SB) 1681 (Chapter 594, Statutes of 1994) was signed into law by the Governor on September 15, 1994, and became effective on January 1, 1995. This legislation recodifies and recasts the provisions of the elder and dependent adult abuse reporting law of the Welfare and Institutions Code (W&IC) Section 15600 et al. Also, the legislation adds to the list of mandated reporters of physical abuse, defines additional terms for purposes of the law, and authorizes the reporting of abuse to the State Department of Mental Health or the State Department of Developmental Services when the abuse occurs in a state mental hospital or a state developmental center respectively. Other revisions help minimize some agency cross-reporting activities by Adult Protective Services agencies.

Recasting of the provisions of the law integrates certain code sections under new Articles, thereby streamlining the law for easier reference by public and private agencies, health and social services providers, facility employers and employees, and organizations, and include the following Articles 2. through 10.:

2. Definitions
3. Mandatory and Nonmandatory Reports of Abuse
4. Confidentiality
5. Local Agency Cross-Reporting
6. Investigation of Reports
7. Interagency Coordination
8. Prosecution of Elder and Dependent Adult Abuse Cases
9. Reporting Forms
10. Employee Statement

Additional mandated reporters are included under the definition of "Care custodian," (W&IC 15610.17), meaning administrator or an employee of the following: Agencies providing publicly funded In-Home Supportive Services; Independent living centers; Alzheimer's Disease day care resource centers; Vocational rehabilitation facilities and work activity centers (formerly "sheltered workshops"); Offices of public conservators, public guardians, and clients' rights advocates, including attorneys; Offices of public conservators, public guardians, and court investigators; protection and advocacy agencies/persons appointed/contracted for under federal legislation for developmentally disabled and mentally ill individuals.

New terms for purposes of provisions of the reporting law are defined, and include: "long-term care facility;" "reasonable suspicion;" and "multidisciplinary personnel team".

Under the new law, mandated reporters must now report suspected abuse occurring in a state mental health hospital or a state developmental center to designated investigators of the State Department of Mental or the State Department of Developmental Services or to the local law enforcement agency. Currently, mandated reporters report suspected abuse to the local ombudsman program or to a local law enforcement agency. County Adult Protective Services (APS) agencies will continue to accept reports of abuse of developmentally disabled and mentally ill persons when they are in their own homes, and should coordinate these cases with Regional Centers and County Departments of Mental Health.

Under W&IC 15640 (a) (1), "Local Agency Cross-Reporting," APS agencies need to report by telephone to local law enforcement agencies only cases of any known or suspected instance of criminal activity, which replaces the current requirement of reporting every case of suspected physical abuse. However, APS agencies must continue to telephone every instance of physical abuse to any public agency which would have responsibility for investigation, including licensing agencies. APS agencies will be required to also send a written report within two working days of receiving the abuse incident to each agency to which a telephone report is required as above.

Only a written report of possible criminal activity, sent within two working days, will be required to be sent to a local law enforcement agency by the APS program in a case of abuse other than physical abuse.

The "California State Guidelines for County Adult Protective Services Abuse Investigations" will continue to be maintained by this department in cooperation with representatives of county government, and in consultation with other concerned state departments, as provided under W&IC 15653 (a).

Added to the abuse reporting law is a section (W&IC 15656 (a)) titled "Prosecution of Elder and Dependent Adult Abuse Cases" which is a repeat of the language in Penal Code Section 368, commonly referred to by law enforcement agencies. Inclusion of the above in the W&I Code is for quicker reference for investigators, and is a reminder of the criminal nature of abuse of elders and dependent adults.

One area of challenge for APS staff has been the difficulty in serving frail elder persons who may, upon initial contact, give indications of incompetence which often is only temporary confusion due to disruption in their lives, fear of being removed from the home, and an unwillingness to report on abuse by family caregivers. As you know, often a trust must be developed by APS staff with the frail elder in order to provide needed assistance in services intervention. While mindful of the foregoing, APS staff must also continue to be aware that any victim of elder or dependent adult abuse may refuse or withdraw consent at any time to an investigation or provision of protective services by an APS agency as provided under W&IC 15636 (a).

As follow-up to the above, W&IC 15636 (b) provides that if an elder or dependent adult abuse victim is so incapacitated that she or he cannot legally give or deny consent to services, a petition for temporary conservatorship or guardianship may be initiated in accordance with Section 2250 of the Probate Code.

Also, when the victim is obviously mentally disordered, a referral may be made to the local mental health agency for detention, as an emergency measure, under W&IC 5150, "Detention of Mentally Disordered Persons for Evaluation and Treatment."

You may wish to make changes in copies of the "Minimum Guidelines for Abuse Investigations" based on information provided in this letter, particularly in sections related to agency cross-reporting and the list of mandated reporters, for future reference.

A letter of notification of changes in the abuse reporting law will be sent by the department to various provider health and social service organizations, and professional associations.

A copy of the legislation, SB 1681, is attached for your reference.

Questions or comments concerning this letter, or related to APS, may be directed by telephone to Lucille Toscano, Adult Protective Services Unit, at (916) 387-4605.

Sincerely,

CAROL R. WIDEMON
Deputy Director
Adult Services Division

Attachment

Senate Bill No. 1681

CHAPTER 594

An act to amend Sections 15600 and 15657.1 of, to amend and renumber the heading of Article 4 (commencing with Section 15630) and the heading of Article 6 (commencing with Section 15660) of Chapter 11 of Part 3 of Division 9 of, to add Section 15636 to, to add a heading to Article 4 (commencing with Section 15633) of Chapter 11 of Part 3 of Division 9 of, to add Article 6 (commencing with Section 15650), Article 7 (commencing with Section 15653), Article 8 (commencing with Section 15656), Article 9 (commencing with Section 15658), and Article 10 (commencing with Section 15659) to Chapter 11 of Part 3 of Division 9 of, to repeal Section 15635 of, to repeal Article 3 (commencing with Section 15620) of, to repeal and add Sections 15630, 15631, 15632, 15633, and 15633.5 of, and to repeal and add Article 2 (commencing with Section 15610), and Article 5 (commencing with Section 15640), of Chapter 11 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to the abuse of adults.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1681, Mello. Aging: elder and dependent adult abuse.

(1) Existing law sets forth the provisions for the reporting of actual or suspected physical or other abuse, as defined, of an elder or dependent adult by specified persons and entities, including care custodians, as defined, imposes various requirements on local, county, and state agencies in processing, investigating, and reporting on these reports, and requires the development of certain reporting forms by the State Department of Social Services in consultation with various entities. Existing law further imposes criminal penalties on persons required to report abuse who fail to do so.

This bill would recodify and recast these provisions. It would, in addition, define the terms "long-term care facility," "reasonable suspicion," and "multidisciplinary personnel team" for purposes of these provisions. It would include Alzheimer's Disease day care centers, in-home supportive services agencies, vocational rehabilitation facilities, independent living centers, private assistance agencies, and clients' rights advocates, as defined, within the definition of "care custodian."

This bill would delete the provisions referring to the long-term care ombudsman coordinator and instead refer to the long-term care ombudsman program. It would delete the provisions requiring the ombudsman coordinator to submit certain reports to the county adult protective services agency, and instead require the

ombudsman program to report to the Department of Aging monthly, and the Department of Aging to report to the State Department of Social Services quarterly. It would no longer require the county to include the reports it receives from the ombudsman program in its report to the State Department of Social Services.

This bill would except state development centers and hospitals from the requirement that abuse occurring in long-term care facilities be submitted to the long-term care ombudsman coordinator. It would authorize state development centers and state hospitals to report alleged or suspected abuse to the State Department of Mental Health or the State Department of Developmental Services.

This bill would authorize the disclosure of certain confidential information between members of the multidisciplinary team. It would also require various agencies to report on an investigation of a referral or report of abuse to the agency submitting the referral or report.

This bill would delete the requirement that the State Department of Social Services consult with the State Department of Education, among others, in the development of certain forms, and instead require consultation with the State Department of Mental Health, among others.

This bill would specifically make it a crime for any person to cause a dependent adult to suffer, or to inflict unjustifiable physical pain or mental suffering on a dependent adult or for any person having the care or custody of any elder or dependent adult to willfully cause or permit the elder or dependent adult to be injured or to cause or permit the elder or dependent adult to be placed in a situation that his or her person or health is endangered. It would also make it a crime for a person to fail to report an instance of physical abuse of an elder or dependent adult when the person is required to do so.

By creating new crimes, this bill would impose a state-mandated local program on counties implementing its provisions.

This bill would require the State Department of Social Services to maintain minimum guidelines for use by counties in determining when an investigation of abuse is warranted.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund,

except that the bill would specify that no reimbursement is required by a particular provision of this act for a specified reason.

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

SECTION 1. Section 15600 of the Welfare and Institutions Code is amended to read:

15600. (a) The Legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons.

(b) The Legislature further recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

(c) The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

(d) The Legislature recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position.

(e) The Legislature further recognizes that factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol.

(f) The Legislature declares that this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this section.

(g) The Legislature further declares that uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county.

(h) The Legislature further finds and declares that infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.

(i) Therefore, it is the intent of the Legislature in enacting this chapter to provide that adult protective services agencies, local

long-term care ombudsman programs, and local law enforcement agencies shall receive referrals or complaints from public or private agencies, from any mandated reporter submitting reports pursuant to Section 15630, or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered, and shall take any actions considered necessary to protect the elder or dependent adult and correct the situation and ensure the individual's safety.

(j) It is the further intent of the Legislature in adding Article 8.5 (commencing with Section 15657) to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.

SEC. 2. Article 2 (commencing with Section 15610) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 3. Article 2 (commencing with Section 15610) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 2. Definitions

15610. The definitions contained in this article shall govern the construction of this chapter, unless the context requires otherwise.

15610.05. "Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

15610.07. "Abuse of an elder or a dependent adult" means physical abuse, neglect, fiduciary abuse, abandonment, isolation, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

15610.10. "Adult protective services" means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action due to ignorance, illiteracy, incompetence, mental limitation, or poor health, lacking in adequate food, shelter, or clothing, exploited of their income and resources, or deprived of entitlement due them.

15610.13. "Adult protective services agency" means a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

15610.15. "Bureau" means the Bureau of Medi-Cal Fraud within the office of the Attorney General.

15610.17. "Care custodian" means an administrator or an employee of any of the following public or private facilities or

agencies, or persons providing care or services for elders or dependent adults, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of the support staff and maintenance staff:

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

(b) Clinics.

(c) Home health agencies.

(d) Agencies providing publicly funded in-home supportive services.

(e) Adult day health care centers.

(f) Secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.

(g) Independent living centers.

(h) Camps.

(i) Alzheimer's Disease day care resource centers.

(j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(k) Respite care facilities.

(*l*) Foster homes.

(m) Vocational rehabilitation facilities and work activity centers.

(n) Regional centers for persons with developmental disabilities.

(o) State Department of Social Services and State Department of Health Services licensing divisions.

(p) County welfare departments.

(q) Offices of patients' rights advocates and clients' rights advocates, including attorneys.

(r) The office of the long-term care ombudsman.

(s) Offices of public conservators, public guardians, and court investigators.

(t) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:

(1) The federal Developmental Disability Assistance and Bill of Rights Act, as amended, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.

(2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illnesses.

(u) Any other protective, public, or private assistance agency or person providing health services or social services to elders or dependent adults.

15610.20. "Clients' rights advocate" means the individual or

individuals assigned by a regional center or state hospital developmental center to be responsible for clients' rights assurance for persons with developmental disabilities.

15610.23. (a) "Dependent adult" means any person residing in this state, between the ages of 18 and 64 years, who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(b) "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

15610.25. "Developmentally disabled person" means a person with a developmental disability specified by or as described in subdivision (a) of Section 4512.

15610.27. "Elder" means any person residing in this state, 65 years of age or older.

15610.30. "Fiduciary abuse" means a situation in which any person who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any use or purposes not in the due and lawful execution of his or her trust.

15610.35. "Goods and services necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following:

(a) The provision of medical care for physical and mental health needs.

(b) Assistance in personal hygiene.

(c) Adequate clothing.

(d) Adequately heated and ventilated shelter.

(e) Protection from health and safety hazards.

(f) Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.

(g) Transportation and assistance necessary to secure any of the needs set forth in subdivisions (a) to (f), inclusive.

15610.37. "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker, or intern, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family, and child counselor trainee, as defined in subdivision (c) of

Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family, and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults.

15610.40. "Investigation" means that activity undertaken to determine the validity of a report of elder or dependent adult abuse.

15610.43. (a) "Isolation" means any of the following:

(1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.

(2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

(3) False imprisonment, as defined in Section 236 of the Penal Code.

(4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

15610.45. "Local law enforcement agency" means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

15610.47. "Long-term care facility" means any of the following:

(a) Any long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(b) Any community care facility, as defined in paragraphs (1) and (2) of subdivision (a) of Section 1502 of the Health and Safety Code, whether licensed or unlicensed.

(c) Any swing bed in an acute care facility, or any extended care facility.

(d) Any adult day health care facility as defined in subdivision (b)

of Section 1570.7 of the Health and Safety Code.

(e) Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

15610.50. "Long-term care ombudsman" means the State Long-Term Care Ombudsman, local ombudsman coordinators, and other persons currently certified as ombudsmen by the Department of Aging as described in Chapter 9 (commencing with Section 9700) of Division 8.5.

15610.53. "Mental suffering" means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by threats, harassment, or other forms of intimidating behavior.

15610.55. (a) "Multidisciplinary personnel team" means any team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly or dependent persons and who are qualified to provide a broad range of services related to abuse of elderly or dependent persons, as defined in Section 15753.5.

(b) A multidisciplinary personnel team may include, but is not limited to, all of the following:

(1) Psychiatrists, psychologists, or other trained counseling personnel.

(2) Police officers or other law enforcement agents.

(3) Medical personnel with sufficient training to provide health services.

(4) Social workers with experience or training in prevention of abuse of elderly or dependent persons.

15610.57. "Neglect" means the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following:

(a) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(b) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(c) Failure to protect from health and safety hazards.

(d) Failure to prevent malnutrition.

15610.60. "Patients' rights advocate" means a person who has no direct or indirect clinical or administrative responsibility for the patient, and who is responsible for ensuring that laws, regulations, and policies on the rights of the patient are observed.

15610.63. "Physical abuse" means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great

bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

(1) Sexual battery, as defined in Section 243.4 of the Penal Code.

(2) Rape, as defined in Section 261 of the Penal Code.

(3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Incest, as defined in Section 285 of the Penal Code.

(5) Sodomy, as defined in Section 286 of the Penal Code.

(6) Oral copulation, as defined Section 288a of the Penal Code.

(7) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(1) For punishment.

(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

15610.65. "Reasonable suspicion" means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.

SEC. 4. Article 3 (commencing with Section 15620) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 5. The heading of Article 4 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is amended and renumbered to read:

Article 3. Mandatory and Nonmandatory Reports of Abuse

SEC. 6. Section 15630 of the Welfare and Institutions Code is repealed.

SEC. 7. Section 15630 is added to the Welfare and Institutions Code, to read:

15630. (a) Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed an incident that reasonably appears to be physical abuse, observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury clearly indicates that physical abuse has occurred or is told by an elder or dependent adult that he

or she has experienced behavior constituting physical abuse shall report the known or suspected instance of abuse by telephone immediately or as soon as possible, and by written report sent within two working days, as follows:

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

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

(3) If the abuse has occurred any place other than one described in paragraph (1), the report shall be made to the adult protective services agency or the local law enforcement agency.

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

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman.

(4) If the suspected or alleged abuse occurred anywhere else, the report may be made to the county adult protective services agency.

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

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

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent

adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse requested by the agency receiving the report.

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

(g) Failure to report physical abuse of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more that six months in the county jail or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 8. Section 15631 of the Welfare and Institutions Code is repealed.

SEC. 9. Section 15631 is added to the Welfare and Institutions Code, to read:

15631. (a) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman program or local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility.

(b) Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in any place other than a long-term care facility may report the abuse to the county adult protective services agency or local law enforcement agency.

SEC. 10. Section 15632 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 15632 is added to the Welfare and Institutions Code, to read:

15632. (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information reported pursuant to this chapter.

(b) Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 or subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

SEC. 12. Section 15633 of the Welfare and Institutions Code is repealed.

SEC. 13. A heading is added to Article 4 (commencing with Section 15633) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4. Confidentiality

SEC. 14. Section 15633 is added to the Welfare and Institutions Code, to read:

15633. (a) The reports made pursuant to Sections 15630 and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected elder or dependent adult abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of elder or dependent adult abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse.

SEC. 15. Section 15633.5 of the Welfare and Institutions Code is repealed.

SEC. 16. Section 15633.5 is added to the Welfare and Institutions Code, to read:

15633.5. (a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, or the bureau of Medi-Cal Fraud who is investigating the known or suspected case of elder or dependent adult abuse.

(b) The identity of all persons who report under this chapter shall be confidential and disclosed only among adult protective services agencies, long-term care ombudsman programs, licensing agencies, local law enforcement agencies, and the bureau, to counsel

representing an adult protective services agency, long-term care ombudsman program, licensing agency, or a local law enforcement agency, by the bureau to the district attorney in a criminal prosecution, when persons reporting waive confidentiality, or by court order.

(c) Notwithstanding subdivisions (a) and (b), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.

SEC. 17. Section 15635 of the Welfare and Institutions Code is repealed.

SEC. 18. Section 15636 is added to the Welfare and Institutions Code, to read:

15636. (a) Any victim of elder or dependent adult abuse may refuse or withdraw consent at any time to an investigation or the provision of protective services by an adult protective services agency or long-term care ombudsman program. The adult protective services agency shall act only with the consent of the victim unless a violation of the Penal Code has been alleged. A local long-term care ombudsman shall act only with the consent of the victim and shall disclose confidential information only after consent to disclose is given by the victim or pursuant to court order.

(b) If the elder or dependent adult abuse victim is so incapacitated that he or she cannot legally give or deny consent to protective services, a petition for temporary conservatorship or guardianship may be initiated in accordance with Section 2250 of the Probate Code.

SEC. 19. Article 5 (commencing with Section 15640) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 20. Article 5 (commencing with Section 15640) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5. Local Agency Cross-Reporting

15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of physical abuse of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision.

(2) Only a written report of possible criminal activity, sent within two working days, shall be required in the case of abuse other than

physical abuse.

(3) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse involving physical abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon local practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or

physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the time at which the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

SEC. 21. Article 6 (commencing with Section 15650) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 6. Investigation of Reports

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

(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 and the local law enforcement agency unless another public agency is given responsibility for investigation in that jurisdiction.

(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. 22. Article 7 (commencing with Section 15653) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 7. Interagency Coordination

15653. (a) Minimum guidelines for use by county adult protective services agencies in determining when an investigation of abuse is warranted shall be maintained by the State Department of Social Services in cooperation with representatives of county government, and in consultation with the Department of Aging, the Department of Justice, and other concerned state departments for use by county adult protective services agencies.

(b) Uniform guidelines for local law enforcement assistance with investigations of allegations of abuse to elders and dependent adults as developed by the Department of Justice in consultation with the department, the Department of Aging, and other concerned state and local agencies pursuant to Section 15640, as amended by Chapter 769 of the Statutes of 1986, shall remain in effect until modified. Consistent with these guidelines, county adult protective services agencies may seek local law enforcement assistance with

investigations of allegations of abuse to elder and dependent adults.

15654. 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 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.

SEC. 23. Article 8 (commencing with Section 15656) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 8. Prosecution of Elder and Dependent Adult Abuse Cases

15656. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts unjustifiable physical pain or mental suffering upon him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts unjustifiable physical pain or mental suffering on him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law prescribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both that imprisonment and fine, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(d) As used in this section, "caretaker" means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(e) Conduct covered in subdivision (b) of Section 15610.57 shall not be subject to this section.

SEC. 23.5. Section 15657.1 of the Welfare and Institutions Code is amended to read:

15657.1. The award of attorney's fees pursuant to subdivision (a) of Section 15657 shall be based on all factors relevant to the value of the services rendered, including, but not limited to, the factors set forth in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California, and all of the following:

(a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.

(b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.

(c) The reasonableness and timeliness of any written offer in compromise made by a party to the action.

SEC. 24. Article 9 (commencing with Section 15658) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 9. Reporting Forms

15658. (a) (1) The written abuse reports required for the reporting of abuse, as defined in this chapter, shall be submitted on forms adopted by the State Department of Social Services after consultation with representatives of the various law enforcement agencies, the Department of Aging, the State Department of Developmental Services, the State Department of Mental Health, the bureau, professional medical and nursing agencies, hospital associations and county welfare departments. These reporting forms shall be distributed by the county adult protective services agencies and the long-term care ombudsman programs. This reporting form may also be used for documenting the telephone report of a known or suspected instance of abuse of an elder or dependent adult by the county adult protective services agency, local ombudsman program, and local law enforcement agencies.

(2) The forms required by this section shall contain the following items:

(A) The name, address, telephone number, and occupation of the person reporting.

(B) The name and address of the victim.

(C) The date, time, and place of the incident.

(D) Other details, including the reporter's observations and beliefs concerning the incident.

(E) Any statement relating to the incident made by the victim.

(F) The name of any individuals believed to have knowledge of

the incident.

(G) The name of the individuals believed to be responsible for the incident and their connection to the victim.

(b) (1) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(2) The county's report to the department shall not include reports it receives from the long-term care ombudsman program pursuant to subdivision (c).

(3) The department shall refer to the bureau monthly data summaries of the reports of elder and dependent adult abuse, neglect, and exploitation, and other abuse it receives from county adult protective services agencies.

(c) Each long-term care ombudsman program shall report to the Office of the Long-Term Care Ombudsman of the Department of Aging monthly on the reports it receives pursuant to this chapter with a copy sent to the county adult protective services agency. The office of the State Ombudsman shall submit a summarized quarterly report to the department based on the monthly reports submitted by local long-term care ombudsman programs. The reports shall be on forms adopted by the department and the office of the State Ombudsman. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the numbers of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

SEC. 25. Article 10 (commencing with Section 15659) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 10. Employee Statement

15659. (a) Any person who enters into employment on or after January 1, 1995, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, that shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons required to make reports pursuant to Section 15630, who were employed prior to January 1, 1995, shall inform those persons of their responsibility to

make reports by delivering to them a copy of the statement specified in subdivision (a).

(c) The cost of printing, distribution, and filing of these statements shall be borne by the employer.

(d) On and after January 1, 1995, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person.

(e) As an alternative to the procedure required by subdivision (d), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1995.

(f) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b) shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report physical abuse of elders or dependent adults or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of these persons to comply with the requirements of this chapter.

SEC. 26. The heading of Article 6 (commencing with Section 15660) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code is amended and renumbered to read:

Article 11. Criminal Record Reporting

SEC. 27. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, except as provided in Section 7 of this act, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

No reimbursement is required by Section 7 of this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.