

An act to amend Section 1032 of the Evidence Code, to amend Sections 1556.5, 1558, and 1596.8662 of the Health and Safety Code, to amend Section 11166 of the Penal Code, and to amend Section 15630 of the Welfare and Institutions Code, relating to child abuse.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this act to do all of the following:

- (a) Increase public safety.
- (b) Prevent abuse survivors from being retraumatized in religious disciplinary meetings.
- (c) Prevent religious leaders from using undue influence to manipulate individuals and discourage reporting of abuse and neglect.
- (d) Reduce court costs by restricting overly broad interpretations of a “penitential communication” for purposes of the clergy-penitent privilege that serve to shield a church, denomination, or religious organization, or a clergy member, from the duty to report abuse and neglect.

SEC. 2. Section 1032 of the Evidence Code is amended to read:

1032. ~~As used in this article, “penitential communication” means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member’s church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.~~ communication, intended to be in confidence, that is initiated and made voluntarily by the penitent to only one authorized clergy member who has a duty to keep those communications secret, in accordance with the tenets, customs, or practices of his or her church, denomination, or organization.

SEC. 3. Section 1556.5 of the Health and Safety Code is amended to read:

1556.5. (a) If the department, as a condition of licensure, requires the chief executive officer or other authorized member of the board of directors and the administrator of a foster family agency to attend an orientation given by the licensing agency that outlines the applicable rules and regulations for operation of a foster family agency, that orientation shall include, but not be limited to, a description of policies, procedures, or practices that violate paragraph (1) or (2) of subdivision-~~(i)~~ (h) of Section 11166 of the Penal Code.

(b) If the department requires, as part of an application for licensure for a foster family agency, a written plan of operation, that plan of operation shall include a written plan establishing policies, procedures, or practices to ensure that the foster family agency does not violate paragraph (1) or (2) of subdivision-~~(i)~~ (h) of Section 11166 of the Penal Code.

(c) For purposes of this section, a foster family agency is defined in paragraph (4) of subdivision (a) of Section 1502.

SEC. 4. Section 1558 of the Health and Safety Code is amended to read:

1558. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility or certified family home, or allowing contact with clients of a licensed facility or certified family home by, any employee, prospective employee, or person who is not a client who has:



(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either the people of this state or an individual in or receiving services from the facility or certified family home.

(3) Been denied an exemption to work or to be present in a facility or certified family home, when that person has been convicted of a crime as ~~defined~~ described in Section 1522.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee or certified family home.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility or certified family home, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The excluded person, the facility or certified family home, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility or certified family home pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

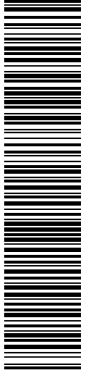
(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility or certified family home, the department shall serve an order of immediate exclusion upon the excluded person that shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense pursuant to Section 11506 of the Government Code by the excluded person to conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility or certified family home shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.



(d) An excluded person who files a written appeal with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or prohibiting the excluded person's employment or presence in the facility or certified family home, or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility or certified family home.

(g) A licensee's or certified family home's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1550.

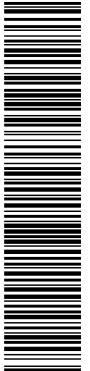
(h) (1) (A) In cases where the excluded person appealed the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

(i) Notwithstanding paragraph (2) of subdivision (a) or subdivision (c) of Section 1550, the department shall take reasonable action, including, but not limited to, prohibiting a person from being a member of the board of directors, an executive director, or an officer of a licensee of a licensed facility or certified family home, or denying an application for, or suspending or revoking, a license, special permit,



certificate of approval, or administrator certificate, issued under this chapter, or denying a transfer of a license pursuant to paragraph (2) of subdivision (c) of Section 1524, upon a finding of a violation of subdivision ~~(i)~~ (h) of Section 11166 of the Penal Code.

SEC. 5. Section 1596.8662 of the Health and Safety Code is amended to read: 1596.8662. (a) The department shall do all of the following:

(1) Make information available to all licensed child day care providers, administrators, and employees of licensed child day care facilities regarding detecting and reporting child abuse and neglect.

(2) Provide training including statewide guidance on the responsibilities of a mandated reporter who is a licensed day care provider or an applicant for that license, administrator, or employee of a licensed child day care facility in accordance with the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code). The department shall provide the guidance using its free module or modules provided on the State Department of Social Services Internet Web site or as otherwise specified by the department. This guidance content shall include, but is not necessarily limited to, all of the following:

(A) Information on the identification of child abuse and neglect, including behavioral signs of abuse and neglect.

(B) Reporting requirements for child abuse and neglect, including guidelines on how to make a suspected child abuse report when suspected abuse or neglect takes place outside a child day care facility, or within a child day care facility, and to which enforcement agency or agencies a report is required to be made.

(C) Information that failure to report an incident of known or reasonably suspected child abuse or neglect, as required by Section 11166 of the Penal Code, is a misdemeanor punishable by up to six months confinement in a county jail, or by a fine of one thousand dollars (\$1,000), or by both that imprisonment and fine.

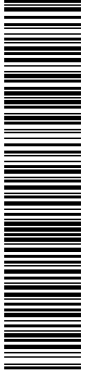
(D) Information that mandated reporting duties are individual and no supervisor or administrator may impede or inhibit reporting duties, and no person making a report shall be subject to any sanction for making the report, pursuant to paragraph (1) of subdivision ~~(i)~~ (h) of Section 11166 of the Penal Code. A supervisor or administrator who impedes or inhibits the duties of a mandated reporter shall be subject to punishment pursuant to Section 11166.01 of the Penal Code.

(E) Information on childhood stages of development in order to help distinguish whether a child's behavior or physical symptoms are within range for his or her age and ability, or are signs of abuse or neglect.

(3) The department shall provide training, including information about child safety and maltreatment prevention using its free training module or modules specified in paragraph (2), or as otherwise specified by the department. This information shall include, but is not necessarily limited to, all of the following:

(A) Information on protective factors that may help prevent abuse, including dangers of shaking a child, safe sleep practices, psychological effects of repeated exposure to domestic violence, safe and age-appropriate forms of discipline, how to promote a child's social and emotional health, and how to support positive parent-child relationships.

(B) Information on recognizing risk factors that may lead to abuse, such as stress and social isolation, and available resources to which a family may be referred to help prevent child abuse and neglect.



(C) When to call for emergency medical attention to prevent further injury or death.

(D) Information on how a licensed child day care provider, administrator, or employee of a licensed child day care facility might communicate with a family before and after making a suspected child abuse report.

(4) The department shall comply with the Dymally-Alatorre Bilingual Services Act of 1973 (Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code), which includes, among alternative communication options, providing the same type of training materials in any non-English language spoken by a substantial number of members of the public whom the department serves.

(b) (1) On or before March 30, 2018, a person who, on January 1, 2018, is a licensed child day care provider, administrator, or employee of a licensed child day care facility shall complete the mandated reporter training provided pursuant to paragraphs (2) and (3) of subdivision (a), and shall complete renewal mandated reporter training every two years following the date on which he or she completed the initial mandated reporter training.

(2) On and after January 1, 2018, a person who applies for a license to be a provider of a child day care facility shall complete the mandated reporter training provided pursuant to paragraphs (2) and (3) of subdivision (a) as a precondition to licensure and shall complete renewal mandated reporter training every two years following the date on which he or she completed the initial mandated reporter training.

(3) On and after January 1, 2018, a person who becomes an administrator or employee of a licensed child day care facility shall complete the mandated reporter training provided pursuant to paragraphs (2) and (3) of subdivision (a) within the first 90 days that he or she is employed at the facility and shall complete renewal mandated reporter training every two years following the date on which he or she completed the initial mandated reporter training.

(4) The licensee of a licensed child day care facility shall obtain proof from an administrator or employee of the facility that the person has completed mandated reporter training in compliance with this subdivision.

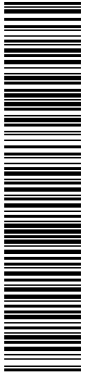
(5) A licensed child day care provider, administrator, or employee of a licensed child day care facility who does not use the online training module provided by the department shall report to, and obtain approval from, the department regarding the training that person shall use in lieu of the online training module.

(c) Current proof of completion for each licensed child day care provider or applicant for that license, administrator, and employee of a licensed child day care facility shall be submitted to the department upon inspection of the child day care or upon request by the department.

(d) (1) The department shall issue a notice of deficiency at the time of a site visit to the licensee of a licensed child day care facility who is not in compliance with this section. The licensee shall, at the time the department issues the notice of deficiency, develop a plan to correct the deficiency within 45 days.

(2) A deficiency under this subdivision is not subject to Section 1596.890.

(e) A licensed child day care provider or applicant for that license, an administrator, or employee of a licensed child care facility is exempt from the detecting and reporting child abuse training if he or she has limited English proficiency and training is not made available in his or her primary language.



~~(f) This section shall become operative on January 1, 2018.~~

SEC. 6. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, “reasonable suspicion” means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

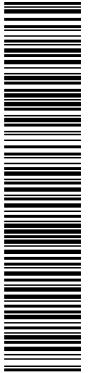
(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

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

~~(b) If, after reasonable efforts, a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.~~

~~(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.~~

~~(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.~~



~~(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.~~

~~(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the State Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.~~

~~(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.~~

~~(e)~~

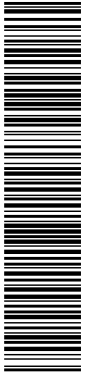
~~(b) A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.~~

~~(d)~~

~~(c) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret. that is initiated and made voluntarily by the penitent to only one authorized clergy member who has a duty to keep those communications secret, in accordance with the tenets, customs, or practices of his or her church, religious denomination, or organization. A clergy member who claims the penitential communication privilege shall take any reasonable action to prevent further abuse by the abuser, without breaking the tenets, customs, or practices of his or her church, denomination, or organization, including, but not limited to, requesting the abuser to seek professional counseling or to report his or her actions to a law enforcement agency.~~

~~(2) Nothing in this subdivision shall be construed to~~ This subdivision does not modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter, reporter, such as participating in or presiding over a disciplinary meeting or proceeding conducted by the church, denomination, or organization in which an abuse victim communicates information regarding the abuse, or an abuser communicates information regarding the abuse to more than one person in the meeting or proceeding.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or



had a reasonable suspicion that a child had been the victim of sexual abuse and that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

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

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

(e)

(d) (1) A commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall, immediately or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

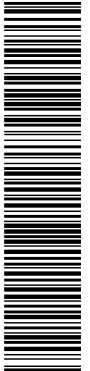
(2) A commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or materials are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (43) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, "sexual conduct" means any of the following:

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



- (B) Penetration of the vagina or rectum by any object.
- (C) Masturbation for the purpose of sexual stimulation of the viewer.
- (D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
- (E) Exhibition of the genitals, pubic, or rectal areas of a person for the purpose of sexual stimulation of the viewer.

~~(f) Any~~

(e) mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

~~(g)~~

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, "any other person" includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

~~(h)~~

(g) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, 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.

~~(i)~~

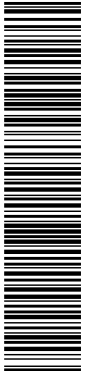
(h) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article. An internal policy shall not direct an employee to allow his or her supervisor to file or process a mandated report under any circumstances.

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

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

~~(j)~~

(i) (1) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based



on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(2) A county probation or welfare department shall immediately, and in no case in more than 24 hours, report to the law enforcement agency having jurisdiction over the case after receiving information that a child or youth who is receiving child welfare services has been identified as the victim of commercial sexual exploitation, as defined in subdivision (d) of Section 11165.1.

(3) When a child or youth who is receiving child welfare services and who is reasonably believed to be the victim of, or is at risk of being the victim of, commercial sexual exploitation, as defined in Section 11165.1, is missing or has been abducted, the county probation or welfare department shall immediately, or in no case later than 24 hours from receipt of the information, report the incident to the appropriate law enforcement authority for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children.

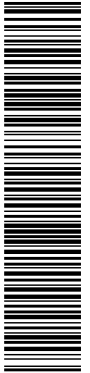
~~(k)~~

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

SEC. 7. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent



adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working days.

(A) If the suspected or alleged abuse is physical abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the following shall occur:

(i) If the suspected abuse results in serious bodily injury, a telephone report shall be made to the local law enforcement agency immediately, but also no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

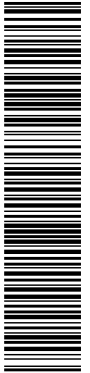
(ii) If the suspected abuse does not result in serious bodily injury, a telephone report shall be made to the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

(iii) When the suspected abuse is allegedly caused by a resident with a physician's diagnosis of dementia, and there is no serious bodily injury, as reasonably determined by the mandated reporter, drawing upon his or her training or experience, the reporter shall report to the local ombudsman or law enforcement agency by telephone, immediately or as soon as practicably possible, and by written report, within 24 hours.

(iv) When applicable, reports made pursuant to clauses (i) and (ii) shall be deemed to satisfy the reporting requirements of the federal Elder Justice Act of 2009, as set out in Subtitle H of the federal Patient Protection and Affordable Care Act (Public Law 111-148), Section 1418.91 of the Health and Safety Code, and Section 72541 of Title 22 of California Code of Regulations. When a local law enforcement agency receives an initial report of suspected abuse in a long-term care facility pursuant to this subparagraph, the local law enforcement agency may coordinate efforts with the local ombudsman to provide the most immediate and appropriate response warranted to investigate the mandated report. The local ombudsman and local law enforcement agencies may collaborate to develop protocols to implement this subparagraph.

(B) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, or any other law, the department may implement subparagraph (A), in whole or in part, by means of all-county letters, provider bulletins, or other similar instructions without taking regulatory action.

(C) If the suspected or alleged abuse is abuse other than physical abuse, and the abuse occurred in a long-term care facility, except a state mental health hospital or a



state developmental center, a telephone report and a written report shall be made to the local ombudsman or the local law enforcement agency.

(D) With regard to abuse reported pursuant to subparagraph (C), the local ombudsman and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

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

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

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

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

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office in the county where the abuse occurred.

(E) (i) If the suspected or alleged abuse or neglect occurred in a state mental hospital or a state developmental center, and the suspected or alleged abuse or neglect resulted in any of the following incidents, a report shall be made immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, and also to the local law enforcement agency:

(I) A death.

(II) A sexual assault, as defined in Section 15610.63.

(III) An assault with a deadly weapon, as described in Section 245 of the Penal Code, by a nonresident of the state mental hospital or state developmental center.

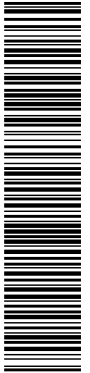
(IV) An assault with force likely to produce great bodily injury, as described in Section 245 of the Penal Code.

(V) An injury to the genitals when the cause of the injury is undetermined.

(VI) A broken bone when the cause of the break is undetermined.

(ii) All other reports of suspected or alleged abuse or neglect that occurred in a state mental hospital or a state developmental center shall be made immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency.

(iii) When a local law enforcement agency receives an initial report of suspected or alleged abuse or neglect in a state mental hospital or a state developmental center pursuant to clause (i), the local law enforcement agency shall coordinate efforts with the designated investigators of the State Department of State Hospitals or the State



Department of Developmental Services to provide the most immediate and appropriate response warranted to investigate the mandated report. The designated investigators of the State Department of State Hospitals or the State Department of Developmental Services and local law enforcement agencies may collaborate to develop protocols to implement this clause.

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

(v) Notwithstanding any other law, a mandated reporter who is required to report pursuant to Section 4427.5 shall not be required to report under clause (i).

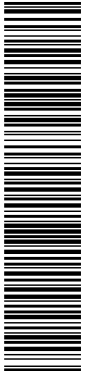
(F) If the abuse has occurred in any place other than a long-term care facility, a state mental hospital, or a state developmental center, the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, “penitential communication” means a communication that is intended to be in confidence, ~~including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret. that is initiated and made voluntarily by the penitent to only one authorized clergy member who has a duty to keep those communications secret, in accordance with the tenets, customs, or practices of his or her church, denomination, or organization.~~ A clergy member who claims the penitential communication privilege shall take any reasonable action to prevent further abuse by the abuser, without breaking the tenets, customs, or practices of his or her church, denomination, or organization, including, but not limited to, requesting the abuser to seek professional counseling or to report his or her actions to a law enforcement agency.

(B) ~~This subdivision shall not be construed to~~ does not modify or limit a clergy member’s duty to report known or suspected elder and dependent adult abuse if he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services ~~agency.~~ agency, or if he or she participates in or presides over a disciplinary meeting or proceeding conducted by the church, denomination, or organization in which an abuse victim communicates information regarding the abuse, or an abuser communicates information regarding the abuse to more than one person in the meeting or proceeding.

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

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



required to report, pursuant to paragraph (1), an incident if all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.

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

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

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

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

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

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

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

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

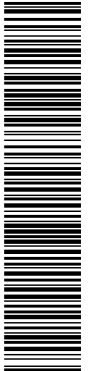
(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

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

(c) (1) ~~Any~~ A mandated reporter who has knowledge, 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. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(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 State Hospitals or the State Department of Developmental



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

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), 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) If 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 there is agreement among them, the telephone report or Internet report, as authorized by Section 15658, 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 or Internet report, as authorized by Section 15658, of a known or suspected instance of elder or dependent adult abuse shall include, if known, 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 adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's 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, as requested by the agency receiving the report.

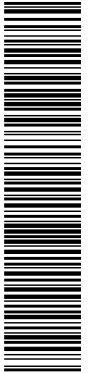
(f) The reporting duties under this section are individual, and ~~no~~ a supervisor or administrator shall not impede or inhibit the reporting duties, and ~~no~~ a person making the report shall not be subject to any sanction for making the report. However, internal procedures to facilitate reporting,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

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

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

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

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than



one thousand dollars (\$1,000), or by both that fine and imprisonment. ~~Any~~ A mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, if that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.

(i) For purposes of this section, “dependent adult” shall have the same meaning as in Section 15610.23.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



LEGISLATIVE COUNSEL'S DIGEST

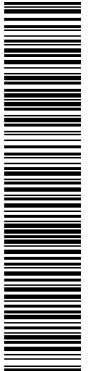
Bill No. _____
as introduced, _____.
General Subject: Crimes: penitential communications: abuse.

The Child Abuse and Neglect Reporting Act (the act) requires a mandated reporter, as defined, to make a report to a specified agency whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The act makes a mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect guilty of a misdemeanor punishable by up to 6 months confinement in a county jail, or by a fine of \$1,000, or by both that imprisonment and fine. Existing law makes a clergy member a mandated reporter for these purposes, but exempts from the reporting requirement a clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication. Existing law defines a "penitential communication" to mean a communication intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

Existing law makes a person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult a mandated reporter and makes a mandated reporter who fails to report, or impedes or inhibits the report of, the abuse of an elder or dependent adult, as specified, guilty of a crime. Existing law exempts from this requirement a mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication, as defined.

Existing law also creates a clergy-penitent evidentiary privilege and defines a penitential communication for these purposes.

This bill would revise the definition of a "penitential communication" for purposes of those provisions by limiting the definition to a communication, intended to be in confidence, that is initiated and made voluntarily by the penitent to only one authorized clergy member who has a duty to keep those communications secret, in accordance with the tenets, customs, or practices of his or her church, religious denomination, or organization. The bill would also require, for purposes of the act, a clergy member who claims the privilege to take any reasonable action to prevent additional abuse by the abuser, without breaking the tenets, customs, or practices of his or her church, denomination, or organization, as specified. The bill would make other, related changes. By expanding the scope of crimes, the bill would impose a state-mandated local program.



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.

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