

***Elder/Dependent Adult Abuse –
Mandated Reporting***



THE ARCHDIOCESE OF SAN FRANCISCO

LEGAL OFFICE

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MEMORANDUM

TO: Priests and Deacons - Archdiocese of San Francisco

FROM: Jack M. Hammel *JMH*
Legal Counsel

DATE: December 17, 2002

RE: Changes to California's Child Abuse and Elder/Dependent Adult Abuse Reporting Laws Affecting Priests and Deacons

The purpose of this memo is to outline and clarify two pieces of legislation (A.B. 299 and A.B. 255), recently signed into law. They amend the previous laws pertaining to the reporting of child abuse and elder/dependent adult abuse.

Please read the memo and attachments carefully and retain them for your future reference.

JMH/jn

Attachments:

- ◆ Assembly Bill 299: Child Abuse Reporting by Clergy (*1 page*)
- ◆ Assembly Bill 255: Elder/Dependent Adult Abuse Reporting by Clergy (*1 page*)
 - ◆ Definitions (*2 pages*)
 - ◆ Risks Factors (*2 pages*)
 - ◆ Adult Protective Services Contact List (*1 page*)
 - ◆ Form: "Report of Suspected Dependent Adult/Elder Abuse" (*1 page*)
 - ◆ California Welfare and Institutions Code § 15630 (*4 pages*)

THE ARCHDIOCESE OF SAN FRANCISCO

LEGAL BACKGROUNDER ON CALIFORNIA ASSEMBLY BILL 299

Re: Child Abuse Reporting by Clergy

Effective 09/27/02

The Child Abuse and Neglect Reporting Act requires specified mandated reporters, which, since 1997, has included clergy members (i.e., priests and deacons), to report suspected incidents of child abuse or neglect involving persons under the age of 18 years within 36 hours of receiving information on an incident. A mandated reporter's failure to report such suspected incidents is a misdemeanor under California law. Since 1997, clergy and (arch)dioceses have been reporting suspected incidents of child abuse to the designated law enforcement agencies. As chaptered, A.B. 299 (Pacheco) provides that:

1. A mandated reporter may include, if he or she deems it appropriate, any nonprivileged documentary evidence relating to the suspected incident of child abuse with their mandated report.
2. The "custodian of records of a clergy member" (e.g., Archdiocesan Vicar for Clergy) shall be added to the list of mandated reporters.
3. Any clergy member or custodian of records for the clergy member may report, on or before January 1, 2004, a previously unreported incident of child sexual abuse that occurred prior to January 1, 1997, even if at the time of the report, the alleged victim is 18 years of age or older.
4. The civil and criminal immunity protections applicable to mandated reporters shall apply to all voluntary reports made by clergy prior to January 1, 2004
5. The bill is an urgency bill that became effective September 27, 2002.

As a practical matter, A.B. 299 makes minor substantive changes to the existing mandated reporting system.

The bill is intended to clarify the responsibility of the (arch)diocesan chancery to report suspected incidents of child abuse of which it becomes aware. The California District Attorneys' Association took the position that, because (arch)diocesan chanceries were already subject to mandated sexual abuse reporting laws, adding "custodians of clergy records" to the mandated reporter statute was merely a restatement of existing law. Indeed, since 1997, (arch)diocesan chanceries have routinely reported suspected incidents of child abuse that were reportable under the Child Abuse and Neglect Reporting Act.

The voluntary documentation and pre-1997 reporting provisions applicable to clergy and custodian-of-record reporters do not impose any additional requirements upon the Church or its ministers.

The statute does provide a grant of civil and criminal immunity to (arch)dioceses that have voluntarily reported pre-1997 incidents of suspected abuse. The intention of the bill was to grant those (arch)dioceses and clergy that have voluntarily worked with local law enforcement agencies (i.e., by disclosing information regarding pre-1997 reports of abuse) civil and criminal immunity from suit pertaining to the making of such disclosures.

As an urgency bill, A.B. 299 became effective September 27, 2002.

THE ARCHDIOCESE OF SAN FRANCISCO

LEGAL BACKGROUNDER ON CALIFORNIA ASSEMBLY BILL 255

Re: Elder/Dependent Adult Abuse Reporting by Clergy

Effective 01/01/03

The existing Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. These procedures designate mandated reporters to report known or suspected instances of elder or dependent adult abuse. Under existing law, care custodians of elder or dependent adults and local law enforcement agencies are mandated reporters. A violation of the reporting requirements by a mandated reporter, as defined, is a misdemeanor. A.B. 255 (Zettel) revises the Elder Abuse and Dependent Adult Civil Protection Act, in pertinent part, as follows:

1. A.B. 255 adds "clergy members" (i.e., priests and deacons) to the list of mandated elder abuse reporters. "Clergy members" do not include unpaid volunteers whose principal occupation or vocation does not involve active or ordained ministry in a church and who periodically visit elder or dependent adults on behalf of that church.
2. A.B. 255 exempts knowledge or reasonable suspicion of elder or dependent adult abuse acquired by a "clergy member" during a "penitential communication" from the mandated reporting requirement under the Act. The legislation defines a "penitential communication" as 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 church, is authorized to hear such communications and, under the discipline tenets, customs, or practices of his church, has a duty to keep those communications secret.
3. **A.B. 255 limits the incidents of suspected abuse reportable** under the Act by clergy, who are not regularly employed on either a full-time or part-time basis in a long-term care facility or who do not have care or custody of an elder or dependent adult, **to those incidents or suspicions "reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care"**.

Only ordained clergy, specifically priests and deacons, are mandated reporters under the Act. Moreover, clergy have a reporting obligation that is expressly limited to suspected abuse based upon evidence that would be "reasonably observable" to the untrained, lay observer. **There is no duty of inquiry or a requirement of specialized training in detecting elder abuse that would apply to clergy.** Moreover, parish volunteers, lay ministers, and seminarians engaging in pastoral training would not be mandated reporters under the Act.

Mandated reporters must report known or suspected instances of abuse by telephone (Adult Protective Services Contact List attached) immediately or as soon as practically possible, and by written report (copy of Form attached), sent within two (2) working days. Failure to do so is a misdemeanor punishable by up to six (6) months in jail and/or a fine of up to \$1,000. Mandated reports are immune from both civil and criminal liability for any report made. The legislation becomes effective January 1, 2003

As required by law, the Archdiocese is hereby providing those clergy in its service with a complete copy of Section 15630 of the Welfare and Institutions Code. Also attached are copies of the legal definitions of "Elder", "Dependent Adult", "Abuse", etc., as well as a reference sheet outlining the various Risk Factors associated with abuse and neglect.

Definitions

"Mandated Reporting Party" (See reverse side of form SOC 341: Report of Suspected Dependent Adult/Elder Abuse) Everyone should report all observed, known or suspected incidents of adult abuse, but the following persons are required by law: Any person, compensated or not, who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, such as; health practitioners, law enforcement, care custodians, and social service employees. Unless otherwise noted all definitions are in Welfare & Institutions Code Section 15610 (a) & 15630 (a).

"Elder" Any person who is 65 years of age or older. Penal Code Section 368

"Dependent Adult" Any person who is between the ages of 18 and 64, who has physical or mental limitations which 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. "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. Penal Code Section 368

"Abuse of an elder or dependent adult" means either of the following: (a) physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

"Physical Abuse" means any of the following: (a) assault, (b) battery, (c) assault with a deadly weapon or force likely to produce great bodily injury, (d) unreasonable physical restraint, or prolonged or continual deprivation of food or water, (e) sexual assault, that means any of the following: (1) sexual battery, (2) rape, (3) rape in concert, (4) spousal rape, (5) incest, (6) sodomy, (7) oral copulation, (8) penetration of a genital or anal opening by a foreign object, (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. Penal Code Sections 240-289

"Financial Abuse" means a situation in which the following applies: (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following: (1) takes, secretes, appropriates or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

"Neglect" means (a) either of the following: (1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise. (2) The negligent failure of the person themselves to exercise that degree of care that a reasonable person in a like position would exercise. (b) includes, but is not limited to, all of the following: (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (2) 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. (3) Failure to protect from health and safety hazards. (4) Failure to prevent malnutrition or dehydration. (5) Failure of a person to provide the needs specified in paragraphs (1) to (4) inclusive, for themselves due to ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health.

Welfare & Institutions Code Section 15610.57

“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.

“Isolation” means (a) 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.

“Abduction” means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

“Mental Suffering” means fear, agitation, confusion, severe depress, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, cause severe depression or serious emotional distress of the elder or dependent adult. Adult Protective Services Program, California-DSS-Manual-APS-01-01, pg. 22.

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

“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.

“Caretaker” means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or dependent adult. Penal Code 368

“Care Custodian” means an administrator or an employee of any public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff.

“Long Term Care Facilities” means any long term care facility, including, but not limited to, skilled nursing and intermediate care facilities, community care facilities (including adult day care facilities and residential care facilities for the elderly- licensed or unlicensed, swing beds in an acute care facility or any extended care facility, and adult day health care facility). Acute care hospitals are not included in the definition of long term care (LTC) facility within which the Ombudsman and law enforcement agencies have responsibility to investigate reports of abuse. Refers to: all of Health and Safety Code Sections 1418(a), 1502(a), (1 and 2), 1570.7

Risks Factors

RISK FACTOR & POSSIBLE ABUSE or NEGLECT	OBSERVATIONS RELATED TO RISK FACTORS THAT MAY INDICATE ABUSE OR NEGLECT <i>*Note-Caregiver related issues appear in Italics*</i>
Illness, Frail, Fall Risk	The victim may present as very thin, tremulous, or with clear symptoms of illness such as hacking cough, vomiting, etc. Repeated injuries may be observed on the victim. The victim may tell of having fallen, or may have bruises from falling on their knees, bumping their head, or striking other parts of their body in a fall. Dropping of objects, inability to pick up objects or maintain balance. Sudden or dramatic changes in the victim's health may be observed. The victim's statements about their injuries may be inconsistent with the injuries they have received.
Mental Deficits	Extreme confusion, inability to remember events or persons that should be familiar. Extreme difficulty with simple tasks such as dialing the telephone telling time, or recalling very recent events. Sudden, dramatic changes in the victim's behavior may be observed.
Undue Influence, Intimidation, Isolation	Someone else has taken over decision making for the victim and may be managing their money or property. Others frighten the victim to influence them, perhaps telling them they will be hospitalized, emphasizing that they can't function alone, or overriding their attempts to control their lives. <i>Caregivers forbidding others to visit, preventing or delaying medical care forcing the victim to remain at home alone, or causing them to avoid the people or activities they knew in the past. Victims who appear fearful of the caregiver without identifiable cause, or caregivers who are verbally intimidating toward victims.</i>
Poor Judgement, Limited Insight	Leaves stove on and forgets, invites unknown strangers in, makes purchases of unknown products because advised to do so by unknown others, forgetting or avoiding paying bills. Inability to make connections such as: not taking prescribed medication (example: Insulin) may make the victim ill. Wandering outside late at night without apparent purpose or intent.
Resistance to Assistance	Although quite normal to a degree, if assistance is desperately needed to avoid serious consequences, this may necessitate a report. Examples would be: toilets won't work but refuses to allow landlord to fix them; electricity being turned off, but refuses to pay the bill; refuses delivered meals although unable to shop for self or prepare meals.
Substance Abuse, Alcohol Abuse	The victim is taking medications that are not prescribed, or taking significantly more prescribed medications than prescriptions call for (example: prescription says up to 4 Valium per day, the victim takes 8 and looks very drowsy). The victim appears intoxicated, complains of hang-over symptoms repeatedly, or numerous empty liquor bottles have been seen in the home indicating excessive use. <i>Substance Abuse or Alcohol Abuse by a Caregiver or another resident of the victim's household should be reported as these situations often have significant effect on the victim and on any plans made to assist them.</i>
Physical Disability	While physically challenged individuals may cope with their disabilities very well, a victim's disabling condition may worsen, or a health or mobility problem may have advanced to the point that the individual requires assistance.
Developmental Disability	Victims who are Developmentally Disabled face special types of problems and may be unable to meet basic living activity requirements. If they also suffer from a cognitive impairment, it may be hard for them to understand that they are not meeting certain basic needs that others might readily recognize.

Poor Living Conditions	Victims may live in an unhealthy living situation because they cannot function well enough to maintain a clean/healthy environment. Note: for some this may be a lifestyle.
Stresses/Crises	Whether it is the death of a spouse, or a change in their environment, it is not the particular event, but the victim's interpretation of it and their reaction that may cause them significant problems. Severe Depression is a serious problem in the elderly, so new situational crises that effect the victim significantly may warrant an APS referral.
Physical or Sexual Abuse	Any new abuse, reports of past abuse that you are not sure were reported before, or unplanned contact with previous perpetrators should be reported to the APS Registry immediately.
Injuries	If the victim sustains an injury, they should receive medical attention as soon as possible. Any information given by the victim should be documented and, if potentially abuse or neglect related, relayed to APS. Many APS victims have been known to cover for their abusers, and specifics of what they initially said about their injury may help to ascertain if there has been abuse or neglect. <i>Caregivers who fail to bring in victims for treatment or who refuse to give information about injuries or about the victim's condition may be an indicator of abuse or neglect.</i>
Neglect Issues	<i>Neglect by others (not self-neglect) may consist of lack of adequate supervision by Care Providers, failure to obtain or follow through with needed medical care, failure to meet basic needs (example: food, clothing, shelter), or failure to keep their environment safe and adequately clean. Caregivers may have unrealistic expectations of the victim and may fail to give them adequate assistance.</i>
Unpaid Bills (examples: Rent, Mortgage)	Whether due to financial insufficiency, misuse of funds by others, or diminished mental capacity to understand or remember bill paying, this may cause the disastrous (and often needless) loss of the victim's property or assets. Call immediately if you become aware of potential new financial problems, or if planned interventions to maintain their living quarters or payments for essentials fall through.
Care Giver Resistance	<i>Although most Caregivers, whether they are family or friends of the victim mean to help them, they may resist services essential to the victim that they do not understand or do not approve of. If this occurs, contact APS and report the specifics of the situation. Sometimes Caregivers will agree to an intervention plan, and later change their minds, creating potential crises.</i>
Care Giver Stress	<i>Caregivers who appear to be socially isolated or under stress may not be able to meet their own needs and may require APS assistance or respite.</i>
Withdrawal from Family and Supports	If the victim becomes more withdrawn due to; depression, physical or mental illness, immobility, or situations that are not already investigated should be reported to APS. A victim's 'closing down' to others, or putting their affairs in order prematurely, may indicate that the victim is ready to 'give up' and might precede self-destructive or self-neglectful behavior.
Previous Abuse or Neglect	The nature of abuse and neglect with victims often makes them hesitant to talk about what has happened. If victims divulge information about other types of neglect, or even prior incidents of the type of abuse for which they came to APS attention, please let us know. This information may become very important later on. If a prior perpetrator of abuse has unplanned contact with the victim, let us know immediately in case further intervention is needed to protect the victim.
Mental Health, Violence, Domestic Violence, or Criminal history or behavior by persons involved with victims	When making a report to APS any information about these problems (past or present) should be reported.

Adult Protective Services

Archdiocese of San Francisco Contact List

Marin County
Department of Health and Human Services
10 North San Pedro Rd., Suite 1007
San Rafael, CA 94903

- Susan Powers-Kane, Program Manager
(415) 499-7130
E-mail: skane@marin.org
Fax: (415) 499-6465

WEBSITE:

www.co.marin.ca.us/depts/HH/main/ss/atisfaq.cfm#adult

HOTLINE*: (415) 507-2774

Mariposa County
Department of Human Services
Post Office Box 7
Mariposa, CA 95338

- Dorothy Langworthy, APS Supervisor
(209) 966-2442
E-mail: N/A
Fax: (209) 742-5854

WEBSITE: www.mariposacounty.org

HOTLINE*: (800) 266-3609

San Francisco City and County
Department of Human Services
Post Office Box 7988
San Francisco, CA 94120-7988

- Mary Counihan, APS Section Manager
(415) 557-5520
E-mail: Mary_Counihan@ci.sf.ca.us
Fax: (415) 557-5377

WEBSITE: www.ci.sf.ca.us/dhs/aps.htm

HOTLINES*: (800) 814-0009
(415) 557-5230

San Mateo County
Department of Health Services
Aging and Adult Services
225 37th Avenue
San Mateo, CA 94403

- Lisa Mancini, APS Program Manager
(650) 573-2138
E-mail: lmancini@co.sanmateo.ca.us
Fax: (650) 573-2193
- Sam Harary, APS Supervisor
(650) 573-3971
E-mail: Sharary@co.sanmateo.ca.us

Fax: (650) 573-2193

WEBSITE: www.smhealth.org/aging.html

HOTLINE*: (800) 675-8437

*24-Hour Hotline

REPORT OF SUSPECTED DEPENDENT ADULT/ELDER ABUSE

TO BE COMPLETED BY REPORTING PARTY. PLEASE PRINT OR TYPE. SEE GENERAL INSTRUCTIONS.

COUNTY APS/OMBUDSMAN CASE NUMBER

RECEIVING AGENCY USE ONLY

LAW ENFORCEMENT CASE/FILE NUMBER

A. VICTIM

*NAME (LAST NAME FIRST): _____ *AGE: _____ DATE OF BIRTH: _____ SSN: _____ SEX: ☐ M ☐ F ETHNICITY: _____ LANGUAGE (✓ CHECK ONE)
☐ NON-VERBAL ☐ ENGLISH
☐ OTHER (SPECIFY) _____

*ADDRESS (IF FACILITY, INCLUDE NAME): _____ *CITY: _____ *ZIP CODE: _____ *TELEPHONE: _____
()

*PRESENT LOCATION (IF DIFFERENT FROM ABOVE): _____ *CITY: _____ *ZIP CODE: _____ *TELEPHONE: _____
()

☐ ELDERLY (65+) ☐ DEVELOPMENTALLY DISABLED ☐ MENTALLY DISABLED/ILL ☐ PHYSICALLY DISABLED ☐ UNKNOWN ☐ LIVES ALONE ☐ LIVES WITH OTHERS

*B. REPORTING PARTY (Please ✓ check ☐ if reporting party waives confidentiality).

*NAME (PRINT) _____ SIGNATURE _____ OCCUPATION _____ AGENCY _____

RELATION TO VICTIM _____ WHERE TO CONTACT: _____ (STREET) _____ (CITY) _____ (ZIP CODE) _____ TELEPHONE _____
()

C. INCIDENT INFORMATION - Address where incident occurred

*DATE/TIME OF INCIDENT(S) _____ PLACE OF INCIDENT (✓ CHECK ONE)
☐ OWN HOME ☐ COMMUNITY CARE FACILITY ☐ HOSPITAL/ACUTE CARE HOSPITAL
☐ HOME OF ANOTHER ☐ NURSING FACILITY/SWING BED ☐ OTHER _____

*D. REPORTED TYPES OF ABUSE (✓ CHECK ALL THAT APPLY).

1. PERPETRATED BY OTHERS (WIC 15610.07)

- a. PHYSICAL
☐ ASSAULT/BATTERY
☐ CONSTRAINT OR DEPRIVATION
☐ CHEMICAL RESTRAINT
☐ MEDICATION
☐ OTHER (SPECIFY) _____
- b. ☐ SEXUAL
c. ☐ NEGLECT
d. ☐ ABANDONMENT
- e. ☐ FINANCIAL
f. ☐ ISOLATION
g. ☐ OTHER (Non-Mandated e.g., Psychological/Mental, Abduction)

2. SELF-NEGLECT (WIC 15610.57(b)(5))

- a. ☐ PHYSICAL CARE (e.g., personal hygiene, food, clothing, shelter)
b. ☐ MEDICAL CARE (e.g., physical and mental health needs)
c. ☐ HEALTH and SAFETY HAZARDS
d. ☐ MALNUTRITION/DEHYDRATION
e. ☐ OTHER (Non-Mandated e.g., financial)

ABUSE RESULTED IN (✓ CHECK ALL THAT APPLY) ☐ NO PHYSICAL INJURY ☐ MINOR MEDICAL CARE ☐ HOSPITALIZATION ☐ CARE PROVIDER REQUIRED
☐ DEATH ☐ MENTAL SUFFERING ☐ OTHER (SPECIFY) _____ ☐ UNKNOWN

*E. REPORTER'S OBSERVATIONS, BELIEFS, AND STATEMENTS BY VICTIM IF AVAILABLE. LIST ANY POTENTIAL DANGER FOR INVESTIGATOR (e.g., animals, weapons, communicable diseases, etc.). ☐ ✓ Check if medical, financial, photographs or other supplemental information is attached.

F. FAMILY MEMBER OR OTHER PERSON RESPONSIBLE FOR VICTIM'S CARE. (If unknown, list contact person).

*NAME _____ IF CONTACT PERSON ONLY ✓ CHECK ☐ *RELATIONSHIP _____
*ADDRESS _____ *ZIP CODE: _____ *TELEPHONE: _____
()

*G. COLLATERAL CONTACTS AND/OR PERSONS BELIEVED TO HAVE KNOWLEDGE OF ABUSE. (e.g., family, significant others, neighbors, medical providers and agencies involved, etc.)

NAME	ADDRESS	TELEPHONE NO.	RELATIONSHIP

H. SUSPECTED ABUSER Please ✓ check if ☐ Self-Neglect

NAME OF SUSPECTED ABUSER _____ ☐ CARE CUSTODIAN (type) _____ ☐ PARENT ☐ SON/DAUGHTER ☐ OTHER _____
☐ HEALTH PRACTITIONER (type) _____ ☐ SPOUSE ☐ OTHER RELATION _____

ADDRESS _____ *ZIP CODE: _____ TELEPHONE: _____ SEX: ☐ M ☐ F ETHNICITY: _____ AGE: _____ D.O.B.: _____ HEIGHT: _____ WEIGHT: _____ EYES: _____ HAIR: _____

I. TELEPHONE REPORT MADE TO: (Completed by Mandated Reporter)

NAME OF OFFICIAL CONTACTED BY PHONE _____ TELEPHONE: _____ DATE/TIME: _____
()

J. WRITTEN REPORT ☐ Mailed or ☐ Faxed

AGENCY NAME _____ ADDRESS OR FAX # _____ DATE MAILED OR FAXED _____

K. AGENCY USE ONLY ☐ Telephone Report ☐ Written Report

Report Received by: _____ Date/Time: _____
☐ Assigned ☐ Immediate Response ☐ Ten-day response ☐ No face-to-face required

Approved by: _____ Assigned to (optional): _____
Cross-Reported to: ☐ APS ☐ Law Enforcement ☐ Ombudsman ☐ State Dept. of Mental Health ☐ State Dept. of Developmental Services ☐ CCL
State Dept. of Health Services Licensing & Crt ☐ Bureau of Medi-Cal Fraud & Elder Abuse ☐ Professional Board ☐ Other (Specify) _____

CALIFORNIA WELFARE AND INSTITUTIONS CODE
Chapter 54, Section 9, § 15630
(Effective January 1, 2003)

*(Italics indicate changes or additions, *** indicate omissions)*

SEC. 9. Section 15630 of the Welfare and Institutions Code is amended to read:

§ 15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person 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, 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, abandonment, *abduction*, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as *practicably* possible, and by written report sent within two working days, as follows:

(A) 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.

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

(i) *Report to the State Department of Health Services 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 care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.*

(iii) *Report to the State Department of Health Services 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 ***.*

(B) If the suspected or alleged abuse occurred in a state mental *** 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.

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*.

(C) If the abuse has occurred any place other than one described in subparagraph (A), 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.

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

(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 where 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, 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 where 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 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 only to those categories of mandated reporters that the State Department of Health Services 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 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 Health Services 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 Mental Health or the State Department of Developmental Services *** or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and 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) 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, *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 person responsible for the elder or dependent adult's care, *** 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, *as 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)(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 physical abuse, 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 mandated reporter who willfully fails to report physical abuse, abandonment, *abduction*, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where 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.

SEC. 10. Section 15633.5 of the Welfare and Institutions Code is amended 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, *a district attorney's office*, the Bureau of Medi-Cal Fraud and Elder Abuse, or investigators of the Department of Consumer Affairs, Division of Investigation, who are 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, *district attorneys' offices*, the bureau, and the Division of Investigation 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. 11. Section 15634 of the Welfare and Institutions Code is amended to read:

§ 15634. (a) No care custodian, *clergy member*, health practitioner, or employee of an adult protective service agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, *clergy member*, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency *investigating a report of known or suspected elder or dependent adult abuse*, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse, shall *** incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, *** immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, *clergy member*, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present *** to the State Board of Control *a claim* for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.



THE ARCHDIOCESE OF SAN FRANCISCO

LEGAL OFFICE

ONE PETER YORKE WAY, SAN FRANCISCO, CA 94109-6602 (415) 614-5623 FAX (415) 614-5624

MEMORANDUM

TO: Most Reverend John C. Wester
Annabelle Groh
Deacon Leon Kortenkamp
Carl Feil

FROM: Jack M. Hammel
Legal Counsel

DATE: December 20, 2002

RE: New Elder/Dependent Adult Abuse Reporting Law
Applicable to Priests and Deacons

You have seen, or soon will see, my memo to Priests and Deacons serving the Archdiocese of San Francisco, concerning the above-referenced subject. In addition, the law requires that any "new hires" (i.e., newly ordained), prior to commencing their employment, and as a prerequisite to that employment, must sign an acknowledgment (copy attached) concerning their obligations under the law.

Given the fact that clergy new hires are also required to sign an acknowledgment pertaining to their receipt of the Archdiocese's *Policies and Procedures concerning Child Abuse and Harassment*, I listed the Office of Human Resources as the place to send the signed form (since it will be in the best position to monitor whether both forms have been timely signed and submitted).

I've also attached a copy of the California Welfare and Institutions Code section referenced in the acknowledgment form which must be given to the clergy prior to their signing the acknowledgment.

JMH/jn
Enclosures

THE ARCHDIOCESE OF SAN FRANCISCO

**CLERGY (PRIEST/DEACON) ACKNOWLEDGMENT
REGARDING LEGAL RESPONSIBILITY TO REPORT
ELDER/DEPENDENT ADULT ABUSE**

I hereby acknowledge that I have received and read a copy of Section 15630 of the California Welfare and Institutions Code and agree to comply with its provisions.

I acknowledge and understand that, while everyone is encouraged by the Archdiocese of San Francisco to report suspected elder/dependent adult abuse, as a member of the "clergy" I am required (except in the case of a "penitential communication" as defined in Section 15630) to report such abuse if, in my professional capacity or within the scope of my employment, I observe or have knowledge of an incident that reasonably appears to involve elder/dependent adult abuse.

I understand that I must report the known or suspected instance of elder/dependent adult abuse to an adult protective services agency or the local law enforcement agency immediately, or as soon as practically possible, by telephone, and to prepare and send a written report thereof within two working days of receiving the information concerning the incident.

(Date)

(Signature)

(Location: Parish/School)

(Please Print Name)

NOTE TO SITE SUPERVISOR

Make sure that the individual signing this Acknowledgment has, in fact, received a copy of Welfare and Institutions Code Section 15630. Copies are available through the Vicar for Clergy, Permanent Diaconate, and Human Resources Offices. Send signed original to Archdiocesan Human Resources Office and retain a copy at your site.

CALIFORNIA WELFARE AND INSTITUTIONS CODE
Chapter 54, Section 9, § 15630
(Effective January 1, 2003)

*(Italics indicate changes or additions, *** indicate omissions)*

SEC. 9. Section 15630 of the Welfare and Institutions Code is amended to read:

§ 15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person 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, 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, abandonment, *abduction*, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as *practicably* possible, and by written report sent within two working days, as follows:

(A) 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.

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

(i) *Report to the State Department of Health Services 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 care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.*

(iii) *Report to the State Department of Health Services 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 ***.*

(B) If the suspected or alleged abuse occurred in a state mental *** 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.

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*.

(C) If the abuse has occurred any place other than one described in subparagraph (A), 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.

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

(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 where 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, 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 where 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 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 only to those categories of mandated reporters that the State Department of Health Services 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 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 Health Services 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 Mental Health or the State Department of Developmental Services *** or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and 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) 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, *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 person responsible for the elder or dependent adult's care, *** 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, *as* 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)(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 physical abuse, 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 mandated reporter who willfully fails to report physical abuse, abandonment, *abduction*, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where 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.

SEC. 10. Section 15633.5 of the Welfare and Institutions Code is amended 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, *a district attorney's office*, the Bureau of Medi-Cal Fraud *and Elder Abuse*, or investigators of the Department of Consumer Affairs, Division of Investigation, who are 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, *district attorneys' offices*, the bureau, and the Division of Investigation 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. 11. Section 15634 of the Welfare and Institutions Code is amended to read:

§ 15634. (a) No care custodian, *clergy member*, health practitioner, or employee of an adult protective service agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, *clergy member*, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency *investigating a report of known or suspected elder or dependent adult abuse*, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse, shall *** incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, *** immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, *clergy member*, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present *** to the State Board of Control *a claim* for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.
