

Introduced by Senator WaltersFebruary 18, 2011

An act to amend Sections 368 and 868.5 of the Penal Code, and to amend Sections 4689.2, 15660, and 16501 of the Welfare and Institutions Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 717, as introduced, Walters. Elder or dependent abuse.

Existing law makes it a crime for a person who knows or reasonably should know that a person is an elder or dependant adult, under circumstances likely to produce great bodily harm or death, to willfully cause or permit any elder or dependent adult to suffer, or inflict unjustifiable physical pain or mental suffering thereon, or to cause or permit the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, as specified. Existing law punishes a violation of this provision by imprisonment in a county jail not exceeding one year, or by a fine not to exceed \$6,000, or by both that fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 4 years.

Under existing law, a person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes an elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering thereon, or permits the health of the elder or dependent adult to be endangered is guilty of a misdemeanor. Existing law punishes a 2nd or subsequent violation of that provision by a fine not to exceed \$2,000 or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

The bill would instead provide that a violation of the above provisions shall be punished by imprisonment in a county jail not exceeding one year, or by a fine not to exceed \$6,000, or by both that fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 4 years, without regard to whether or not the violation occurred under circumstances likely to produce great bodily harm or death. This bill would accordingly delete the provisions regarding elder or dependent adult abuse under circumstances or conditions other than those likely to produce great bodily harm or death.

This bill would make other conforming changes.

By increasing the punishment for a crime, this bill would create 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.

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

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

3 368. (a) The Legislature finds and declares that ~~crimes against~~
4 elders and dependent adults are deserving of special consideration
5 and protection, not unlike the special protections provided for
6 minor children *and victims of domestic violence*, because elders
7 and dependent adults may be confused, on various medications,
8 mentally or physically impaired, or incompetent, and therefore
9 less able to protect themselves, to understand or report criminal
10 conduct, or to testify in court proceedings on their own behalf.
11 *Elder and dependent adults are often financially dependent upon*
12 *their abuser and feel that there is no alternative but to stay with*
13 *the abuser. In addition, because much elder and dependent abuse*
14 *is committed by family members, the victims often love the abuser*
15 *and do not want the abuser to be prosecuted, which continues the*
16 *cycle of abuse.*

17 (b) ~~(1)~~ Any person who knows or reasonably should know that
18 a person is an elder or dependent adult and who, ~~under~~

1 ~~circumstances or conditions likely to produce great bodily harm~~
2 ~~or death, willfully causes or permits any elder or dependent adult~~
3 ~~to suffer, or inflicts thereon unjustifiable physical pain or mental~~
4 ~~suffering, or having the care or custody of any elder or dependent~~
5 ~~adult, willfully causes or permits the person or health of the elder~~
6 ~~or dependent adult to be injured, or willfully causes or permits the~~
7 ~~elder or dependent adult to be placed in a situation in which his or~~
8 ~~her person or health is endangered, is punishable by imprisonment~~
9 ~~in a county jail not exceeding one year, or by a fine not to exceed~~
10 ~~six thousand dollars (\$6,000), or by both that fine and~~
11 ~~imprisonment, or by imprisonment in the state prison for two,~~
12 ~~three, or four years.~~

13 ~~(2)~~

14 ~~(c) (1) If in the commission of an offense described in paragraph~~
15 ~~(4) subdivision (b), the victim suffers great bodily injury, as defined~~
16 ~~in Section 12022.7, the defendant shall receive an additional term~~
17 ~~in the state prison as follows:~~

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

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

20 ~~(3)~~

21 ~~(2) If in the commission of an offense described in paragraph~~
22 ~~(4) subdivision (b), the defendant proximately causes the death of~~
23 ~~the victim, the defendant shall receive an additional term in the~~
24 ~~state prison as follows:~~

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

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

27 ~~(e) Any person who knows or reasonably should know that a~~
28 ~~person is an elder or dependent adult and who, under circumstances~~
29 ~~or conditions other than those likely to produce great bodily harm~~
30 ~~or death, willfully causes or permits any elder or dependent adult~~
31 ~~to suffer, or inflicts thereon unjustifiable physical pain or mental~~
32 ~~suffering, or having the care or custody of any elder or dependent~~
33 ~~adult, willfully causes or permits the person or health of the elder~~
34 ~~or dependent adult to be injured or willfully causes or permits the~~
35 ~~elder or dependent adult to be placed in a situation in which his or~~
36 ~~her person or health may be endangered, is guilty of a~~
37 ~~misdemeanor. A second or subsequent violation of this subdivision~~
38 ~~is punishable by a fine not to exceed two thousand dollars (\$2,000);~~
39 ~~or by imprisonment in a county jail not to exceed one year, or by~~
40 ~~both that fine and imprisonment.~~

1 (d) Any person who is not a caretaker who violates any provision
2 of law proscribing theft, embezzlement, forgery, or fraud, or who
3 violates Section 530.5 proscribing identity theft, with respect to
4 the property or personal identifying information of an elder or a
5 dependent adult, and who knows or reasonably should know that
6 the victim is an elder or a dependent adult, is punishable ~~by~~ *as*
7 *follows:*

8 (1) *By* imprisonment in a county jail not exceeding one year, or
9 in the state prison for two, three, or four years, when the moneys,
10 labor, goods, services, or real or personal property taken or obtained
11 is of a value exceeding nine hundred fifty dollars ~~(\$950); and by~~
12 ~~(\$950).~~

13 (2) *By* a fine not exceeding one thousand dollars (\$1,000), by
14 imprisonment in a county jail not exceeding one year, or by both
15 that fine and imprisonment, when the moneys, labor, goods,
16 services, or real or personal property taken or obtained is of a value
17 not exceeding nine hundred fifty dollars (\$950).

18 (e) Any caretaker of an elder or a dependent adult who violates
19 any provision of law proscribing theft, embezzlement, forgery, or
20 fraud, or who violates Section 530.5 proscribing identity theft,
21 with respect to the property or personal identifying information of
22 that elder or dependent adult, is punishable ~~by~~ *as follows:*

23 (1) *By* imprisonment in a county jail not exceeding one year, or
24 in the state prison for two, three, or four years when the moneys,
25 labor, goods, services, or real or personal property taken or obtained
26 is of a value exceeding nine hundred fifty dollars ~~(\$950); and by~~
27 ~~(\$950).~~

28 (2) *By* a fine not exceeding one thousand dollars (\$1,000), by
29 imprisonment in a county jail not exceeding one year, or by both
30 that fine and imprisonment, when the moneys, labor, goods,
31 services, or real or personal property taken or obtained is of a value
32 not exceeding nine hundred fifty dollars (\$950).

33 (f) Any person who commits the false imprisonment of an elder
34 or a dependent adult by the use of violence, menace, fraud, or
35 deceit is punishable by imprisonment in the state prison for two,
36 three, or four years.

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

39 (h) As used in this section, “dependent adult” means any person
40 who is between the ages of 18 and 64, who has physical or mental

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

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

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

19 (k) In any case in which a person is convicted of violating these
20 provisions, the court may require him or her to receive appropriate
21 counseling as a condition of probation. Any defendant ordered to
22 be placed in a counseling program shall be responsible for paying
23 the expense of his or her participation in the counseling program
24 as determined by the court. The court shall take into consideration
25 the ability of the defendant to pay, and no defendant shall be denied
26 probation because of his or her inability to pay.

27 SEC. 2. Section 868.5 of the Penal Code is amended to read:

28 868.5. (a) Notwithstanding any other law, a prosecuting
29 witness in a case involving a violation of Section 187, 203, 205,
30 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d,
31 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 289, or 647.6,
32 former Section 277 or 647a, subdivision (1) of Section 314, or
33 subdivision (b), (c), (d), or (e) of Section 368 when the prosecuting
34 witness is the elder or dependent adult, shall be entitled, for
35 support, to the attendance of up to two persons of his or her own
36 choosing, one of whom may be a witness, at the preliminary
37 hearing and at the trial, or at a juvenile court proceeding, during
38 the testimony of the prosecuting witness. Only one of those support
39 persons may accompany the witness to the witness stand, although
40 the other may remain in the courtroom during the witness’

1 testimony. The person or persons so chosen shall not be a person
2 described in Section 1070 of the Evidence Code unless the person
3 or persons are related to the prosecuting witness as a parent,
4 guardian, or sibling and do not make notes during the hearing or
5 proceeding.

6 (b) If the person or persons so chosen are also witnesses, the
7 prosecution shall present evidence that the person's attendance is
8 both desired by the prosecuting witness for support and will be
9 helpful to the prosecuting witness. Upon that showing, the court
10 shall grant the request unless information presented by the
11 defendant or noticed by the court establishes that the support
12 person's attendance during the testimony of the prosecuting witness
13 would pose a substantial risk of influencing or affecting the content
14 of that testimony. In the case of a juvenile court proceeding, the
15 judge shall inform the support person or persons that juvenile court
16 proceedings are confidential and may not be discussed with anyone
17 not in attendance at the proceedings. In all cases, the judge shall
18 admonish the support person or persons to not prompt, sway, or
19 influence the witness in any way. Nothing in this section shall
20 preclude a court from exercising its discretion to remove a person
21 from the courtroom whom it believes is prompting, swaying, or
22 influencing the witness.

23 (c) The testimony of the person or persons so chosen who are
24 also witnesses shall be presented before the testimony of the
25 prosecuting witness. The prosecuting witness shall be excluded
26 from the courtroom during that testimony. Whenever the evidence
27 given by that person or those persons would be subject to exclusion
28 because it has been given before the corpus delicti has been
29 established, the evidence shall be admitted subject to the court's
30 or the defendant's motion to strike that evidence from the record
31 if the corpus delicti is not later established by the testimony of the
32 prosecuting witness.

33 SEC. 3. Section 4689.2 of the Welfare and Institutions Code
34 is amended to read:

35 4689.2. (a) It is the intent of the Legislature in enacting this
36 section to require the filing of fingerprints of those individuals
37 whose contact with consumers receiving services and supports
38 from family home agencies, as defined in subdivision (d) of Section
39 4689.1, and family homes, as defined in subdivision (b) of Section
40 4689.1, may pose a risk to the consumers' health and safety.

1 (b) As part of the vendor approval process for family home
2 agencies and family homes, the State Department of Developmental
3 Services shall secure from the Department of Justice and, if
4 applicable, the Federal Bureau of Investigation, a full criminal
5 history to determine whether the applicant or any other person
6 specified in subdivision (c) has ever been convicted of, or arrested
7 for, a crime other than a minor traffic violation. If it is found that
8 the applicant, or any other person specified in subdivision (c), has
9 been convicted of, or is awaiting trial for, a crime other than a
10 minor traffic violation, the vendor application shall be denied,
11 unless the director grants an exemption pursuant to subdivision
12 (f). If no criminal record information has been recorded, the
13 Department of Justice shall provide the applicant and the State
14 Department of Developmental Services with a statement of that
15 fact.

16 (c) In addition to the applicant, this section shall be applicable
17 to criminal convictions of the following persons:

18 (1) Adults responsible for administration or direct supervision
19 of staff.

20 (2) Any adult other than a consumer residing in the family home.

21 (3) Any adult who provides assistance to the consumer in
22 dressing, grooming, bathing, or personal hygiene.

23 (4) Any staff person, employee, consultant, or volunteer who
24 has frequent and routine contact with the consumer. In determining
25 who has frequent contact, any consultant or volunteer shall be
26 exempt unless the volunteer is used to replace or supplement staff
27 or family home personnel in providing services or supports, or
28 both, to consumers. In determining who has routine contact, staff
29 and employees under direct onsite supervision of the family home
30 agency and who are not providing direct services and supports or
31 who have only occasional or intermittent contact with consumers
32 shall be exempt.

33 (5) The executive director of the entity applying for
34 vendorization or other person serving in like capacity.

35 (6) Officers of the governing body of the applicant, or other
36 persons with a financial interest in the applicant, as determined
37 necessary by the department by regulation. The criteria used in
38 the development of these regulations shall be based on the person's
39 capability to exercise substantial influence over the operation of
40 the family home agency or family home.

1 (d) (1) Subsequent to vendorization, any person specified in
2 subdivision (c) and not exempted from fingerprinting shall, as a
3 condition to employment, residence, or presence in a family home
4 agency or a family home, be fingerprinted and sign a declaration
5 under penalty of perjury regarding any prior criminal convictions.
6 The vendor shall submit these fingerprints to the Department of
7 Justice not later than four calendar days following employment,
8 residence, or initial presence in the family home agency or family
9 home. These fingerprints shall be on a card provided by the State
10 Department of Developmental Services for the purpose of obtaining
11 a permanent set of fingerprints. If fingerprints are not submitted
12 to the Department of Justice, as required in this section, that failure
13 shall result in a sanction and the fingerprints shall then be submitted
14 to the State Department of Developmental Services for processing.
15 Upon request of the vendor, who shall enclose a self-addressed
16 stamped postcard for this purpose, the Department of Justice shall
17 verify receipt of the fingerprints.

18 (2) Within 30 calendar days of the receipt of the fingerprints,
19 the Department of Justice shall notify the State Department of
20 Developmental Services of the criminal record information, as
21 provided in subdivision (b). If no criminal record information has
22 been recorded, the Department of Justice shall provide the vendor
23 and the State Department of Developmental Services with a
24 statement of that fact within 15 calendar days of receipt of the
25 fingerprints. If new fingerprints are required for processing, the
26 Department of Justice shall, within 15 calendar days from the date
27 of receipt of the fingerprints, notify the vendor that the fingerprints
28 were illegible.

29 (3) (A) Except for persons specified in paragraph (2) of
30 subdivision (c), the vendor shall endeavor to ascertain the previous
31 employment history of persons required to be fingerprinted under
32 this subdivision. If it is determined by the State Department of
33 Developmental Services, on the basis of the fingerprints submitted
34 to the Department of Justice, that the person has been convicted
35 of, or is awaiting trial for, a sex offense against a minor, or has
36 been convicted for an offense specified in Section 243.4, 273a,
37 273d, or subdivision (b) or (c) of Section 368 of the Penal Code,
38 or has been convicted of a felony, the State Department of
39 Developmental Services shall notify the vendor to act immediately
40 to terminate the person's employment, remove the person from

1 the family home, or bar the person from entering the family home.
2 The State Department of Developmental Services may
3 subsequently grant an exemption pursuant to subdivision (f).

4 (B) If the conviction or arrest was for another crime, except a
5 minor traffic violation, the vendor shall, upon notification by the
6 State Department of Developmental Services, act immediately to
7 do either of the following:

8 (i) Terminate the person’s employment, remove the person from
9 the family home, or bar the person from entering the family home.

10 (ii) Seek an exemption pursuant to subdivision (f). The State
11 Department of Developmental Services shall determine if the
12 person shall be permitted to remain in the family home until a
13 decision on the exemption is rendered.

14 (e) For purposes of this section or any other provision of this
15 chapter, a conviction means a plea or verdict of guilty or a
16 conviction following a plea of nolo contendere. Any action that
17 the State Department of Developmental Services is permitted to
18 take following the establishment of a conviction may be taken
19 when the time for appeal has elapsed, or the judgment of conviction
20 has been affirmed on appeal or when an order granting probation
21 is made suspending the imposition of sentence, notwithstanding
22 a subsequent order pursuant to Sections 1203.4 and 1203.4a of the
23 Penal Code permitting the person to withdraw his or her plea of
24 guilty, or dismissing the accusation, information, or indictment.
25 For purposes of this section or any other provision of this chapter,
26 the record of a conviction, or a copy thereof certified by the clerk
27 of the court or by a judge of the court in which the conviction
28 occurred, shall be conclusive evidence of the conviction. For
29 purposes of this section or any other provision of this chapter, the
30 arrest disposition report certified by the Department of Justice and,
31 if applicable, the Federal Bureau of Investigation, or documents
32 admissible in a criminal action pursuant to Section 969b of the
33 Penal Code, shall be prima facie evidence of the conviction,
34 notwithstanding any other provision of law prohibiting the
35 admission of these documents in a civil or administrative action.

36 (f) After review of the record, the Director of Developmental
37 Services may grant an exemption from denial of vendor approval
38 pursuant to subdivision (b), or for employment in a family home
39 agency or family home of residence or presence in a family home
40 as specified in subdivision (c), if the director has substantial and

1 convincing evidence to support a reasonable belief that the
2 applicant and the person convicted of the crime, if other than the
3 applicant, are of such good character as to justify vendor approval
4 or granting an exemption for purposes of subdivision (c). Except
5 as otherwise provided in this subdivision, no exemption shall be
6 granted if the conviction was for an offense specified in Section
7 220, 243.4, 264.1, subdivision (a) of Section 273a, Section 273d,
8 288, 289, or subdivision ~~(a) or (b)~~ (b) or (c) of Section 368 of the
9 Penal Code, or for another crime against an individual specified
10 in subdivision (c) of Section 667.5 of the Penal Code. The director
11 may grant an exemption if the employee, prospective employee,
12 or other person identified in subdivision (c) who was convicted of
13 a crime against an individual in paragraph (1), (2), (7), or (8) of
14 subdivision (c) of Section 667.5 of the Penal Code, has been
15 rehabilitated as provided in Section 4852.03 of the Penal Code
16 and has maintained the conduct required in Section 4852.05 of the
17 Penal Code for at least 10 years and has the recommendation of
18 the district attorney representing the employee's county of
19 residence, or if the employee, prospective employee, or other
20 persons identified in subdivision (c) has received a certificate of
21 rehabilitation pursuant to Chapter 3.5 (commencing with Section
22 4852.01) of Title 6 of Part 3 of the Penal Code.

23 (g) For purposes of compliance with this section, the department
24 may permit an individual to transfer a current criminal record
25 clearance, as described in subdivision (b), from one family home
26 agency or family home to another, as long as the criminal record
27 clearance has been processed through the State Department of
28 Developmental Services.

29 (h) If a family home agency or a family home is required by
30 law to deny employment or to terminate employment of any
31 employee based on written notification from the state department
32 pursuant to subdivision (c) the family home agency or the family
33 home shall not incur civil liability or unemployment insurance
34 liability as a result of that denial or termination.

35 SEC. 4. Section 15660 of the Welfare and Institutions Code is
36 amended to read:

37 15660. (a) The Department of Justice shall secure any criminal
38 record of a person to determine whether the person has ever been
39 convicted of a violation or attempted violation of Section 243.4
40 of the Penal Code, a sex offense against a minor, or of any felony

1 that requires registration pursuant to Section 290 of the Penal Code,
2 or whether the person has been convicted or incarcerated within
3 the last 10 years as the result of committing a violation or attempted
4 violation of Section 273a or 273d, or subdivision ~~(a) or (b)~~ (b) or
5 (c) of Section 368, of the Penal Code, or as the result of committing
6 a theft, robbery, burglary, or any felony, and shall provide a
7 subsequent arrest notification pursuant to Section 11105.2 of the
8 Penal Code, if both of the following conditions are met:

9 (1) An employer of the person requests the determination and
10 submits fingerprints of the person to the Department of Justice.
11 For purposes of this paragraph, “employer” includes, but is not
12 limited to, an in-home supportive services recipient, as defined by
13 Section 12302.2, an aged or disabled adult who is ineligible for
14 benefits under Chapter 3 (commencing with Section 12000), who
15 receives care by a person as described in paragraph (2), any
16 recipient of personal care services under the Medi-Cal program
17 pursuant to Sections 14132.95 to 14132.97, inclusive, and any
18 public authority or nonprofit consortium, as described in
19 subdivision (a) of Section 12301.6.

20 (2) The person is unlicensed and provides nonmedical domestic
21 or personal care to an aged or disabled adult in the adult’s own
22 home.

23 (b) (1) If it is found that the person has ever been convicted of
24 a violation or attempted violation of Section 243.4 of the Penal
25 Code, a sex offense against a minor, or of any felony which
26 requires registration pursuant to Section 290 of the Penal Code,
27 or that the person has been convicted or incarcerated within the
28 last 10 years as the result of committing a violation or attempted
29 violation of Section 273a or 273d, or subdivision (b) or (c) of
30 Section 368, of the Penal Code, or as the result of committing a
31 theft, robbery, burglary, or any felony, the Department of Justice
32 shall notify the employer of that fact. If no criminal record
33 information has been recorded, the Department of Justice shall
34 provide the employer with a statement of that fact.

35 (2) Any employer may deny employment to any person who is
36 the subject of a report under paragraph (1) when the report indicates
37 that the person has committed any of the crimes identified in
38 paragraph (1).

39 (3) Nothing in this section shall be construed to require any
40 employer to hire any person who is the subject of a report under

1 paragraph (1) when the report indicates that the person has not
2 committed any of the crimes indicated in paragraph (1).

3 (c) (1) Fingerprints shall be on a card provided by the
4 Department of Justice for the purpose of obtaining a set of
5 fingerprints. The employer shall submit the fingerprints to the
6 Department of Justice. Within 30 calendar days of the receipt of
7 the fingerprints, the Department of Justice shall notify the employer
8 of the criminal record information, as provided in this subdivision.
9 If no criminal record information has been recorded, the
10 Department of Justice shall provide the employer with a statement
11 of that fact as soon as possible, but not later than 30 calendar days
12 from the date of receipt of the fingerprints. If new fingerprints are
13 required for processing, the Department of Justice shall, as soon
14 as possible, but not later than 30 calendar days from the date of
15 receipt of the fingerprints, notify the employer that the fingerprints
16 were illegible.

17 (2) Fingerprints may be taken by any local law enforcement
18 officer or agency for purposes of paragraph (1).

19 (3) Counties shall notify any recipient of, or applicant for,
20 in-home supportive services or personal care services under the
21 Medi-Cal program, upon his or her application for in-home
22 supportive services or personal care services or during his or her
23 annual redetermination, or upon the recipient's changing providers,
24 that a criminal record check is available, and that the check can
25 be performed by the Department of Justice.

26 (d) (1) The Department of Justice shall charge a fee to the
27 employer to cover the costs of administering this section.

28 (2) (A) If the employer is an in-home supportive services
29 recipient, as defined in Section 123202.2, a recipient of personal
30 care services under the Medi-Cal program pursuant to Sections
31 14132.95 to 14132.97, inclusive, or any public authority or
32 nonprofit consortium as described in subdivision (a) of Section
33 12301.6, the fee shall be shared by the county and the state in the
34 same ratio as described in Section 12306.

35 (B) (i) Notwithstanding any other provision of law, and except
36 as provided in clause (ii), the department shall, no later than
37 January 1, 2009, implement subparagraph (A) through an all-county
38 letter from the director.

1 (ii) No later than July 1, 2009, the department shall adopt
2 regulations to implement the provisions listed in subparagraph
3 (A).

4 (e) It is the intent of the Legislature that the Department of
5 Justice charge a fee to cover its cost in providing services in
6 accordance with this section to comply with the 30-calendar-day
7 requirement for provision to the department of the criminal record
8 information, as contained in subdivision (c).

9 SEC. 5. Section 16501 of the Welfare and Institutions Code is
10 amended to read:

11 16501. (a) As used in this chapter, “child welfare services”
12 means public social services which are directed toward the
13 accomplishment of any or all of the following purposes: protecting
14 and promoting the welfare of all children, including handicapped,
15 homeless, dependent, or neglected children; preventing or
16 remedying, or assisting in the solution of problems which may
17 result in, the neglect, abuse, exploitation, or delinquency of
18 children; preventing the unnecessary separation of children from
19 their families by identifying family problems, assisting families
20 in resolving their problems, and preventing breakup of the family
21 where the prevention of child removal is desirable and possible;
22 restoring to their families children who have been removed, by
23 the provision of services to the child and the families; identifying
24 children to be placed in suitable adoptive homes, in cases where
25 restoration to the biological family is not possible or appropriate;
26 and ensuring adequate care of children away from their homes, in
27 cases where the child cannot be returned home or cannot be placed
28 for adoption.

29 “Child welfare services” also means services provided on behalf
30 of children alleged to be the victims of child abuse, neglect, or
31 exploitation. The child welfare services provided on behalf of each
32 child represent a continuum of services, including emergency
33 response services, family preservation services, family maintenance
34 services, family reunification services, and permanent placement
35 services, including transitional independent living services. The
36 individual child’s case plan is the guiding principle in the provision
37 of these services. The case plan shall be developed within a
38 maximum of 60 days of the initial removal of the child or of the
39 in-person response required under subdivision (f) if the child has
40 not been removed from his or her home, or by the date of the

1 dispositional hearing pursuant to Section 358, whichever comes
2 first.

3 (1) Child welfare services may include, but are not limited to,
4 a range of service-funded activities, including case management,
5 counseling, emergency shelter care, emergency in-home caretakers,
6 temporary in-home caretakers, respite care, therapeutic day
7 services, teaching and demonstrating homemakers, parenting
8 training, substance abuse testing, and transportation. These
9 service-funded activities shall be available to children and their
10 families in all phases of the child welfare program in accordance
11 with the child's case plan and departmental regulations. Funding
12 for services is limited to the amount appropriated in the annual
13 Budget Act and other available county funds.

14 (2) Service-funded activities to be provided may be determined
15 by each county, based upon individual child and family needs as
16 reflected in the service plan.

17 (3) As used in this chapter, "emergency shelter care" means
18 emergency shelter provided to children who have been removed
19 pursuant to Section 300 from their parent or parents or their
20 guardian or guardians. The department may establish, by
21 regulation, the time periods for which emergency shelter care shall
22 be funded. For the purposes of this paragraph, "emergency shelter
23 care" may include "transitional shelter care facilities" as defined
24 in paragraph (11) of subdivision (a) of Section 1502 of the Health
25 and Safety Code.

26 (b) As used in this chapter, "respite care" means temporary care
27 for periods not to exceed 72 hours. This care may be provided to
28 the child's parents or guardians. This care shall not be limited by
29 regulation to care over 24 hours. These services shall not be
30 provided for the purpose of routine, ongoing child care.

31 (c) The county shall provide child welfare services as needed
32 pursuant to an approved service plan and in accordance with
33 regulations promulgated, in consultation with the counties, by the
34 department. Counties may contract for service-funded activities
35 as defined in paragraph (1) of subdivision (a). Each county shall
36 use available private child welfare resources prior to developing
37 new county-operated resources when the private child welfare
38 resources are of at least equal quality and lesser or equal cost as
39 compared with county-operated resources. Counties shall not
40 contract for needs assessment, client eligibility determination, or

1 any other activity as specified by regulations of the State
2 Department of Social Services, except as specifically authorized
3 in Section 16100.

4 (d) Nothing in this chapter shall be construed to affect duties
5 which are delegated to probation officers pursuant to Sections 601
6 and 654.

7 (e) Any county may utilize volunteer individuals to supplement
8 professional child welfare services by providing ancillary support
9 services in accordance with regulations adopted by the State
10 Department of Social Services.

11 (f) As used in this chapter, emergency response services consist
12 of a response system providing in-person response, 24 hours a day,
13 seven days a week, to reports of abuse, neglect, or exploitation, as
14 required by Article 2.5 (commencing with Section 11164) of
15 Chapter 2 of Title 1 of Part 4 of the Penal Code for the purpose of
16 investigation pursuant to Section 11166 of the Penal Code and to
17 determine the necessity for providing initial intake services and
18 crisis intervention to maintain the child safely in his or her own
19 home or to protect the safety of the child. County welfare
20 departments shall respond to any report of imminent danger to a
21 child immediately and all other reports within 10 calendar days.
22 An in-person response is not required when the county welfare
23 department, based upon an evaluation of risk, determines that an
24 in-person response is not appropriate. This evaluation includes
25 collateral, contacts, a review of previous referrals, and other
26 relevant information, as indicated.

27 (g) As used in this chapter, family maintenance services are
28 activities designed to provide in-home protective services to
29 prevent or remedy neglect, abuse, or exploitation, for the purposes
30 of preventing separation of children from their families.

31 (h) As used in this chapter, family reunification services are
32 activities designed to provide time-limited foster care services to
33 prevent or remedy neglect, abuse, or exploitation, when the child
34 cannot safely remain at home, and needs temporary foster care,
35 while services are provided to reunite the family.

36 (i) As used in this chapter, permanent placement services are
37 activities designed to provide an alternate permanent family
38 structure for children who because of abuse, neglect, or exploitation
39 cannot safely remain at home and who are unlikely to ever return
40 home. These services shall be provided on behalf of children for

1 whom there has been a judicial determination of a permanent plan
2 for adoption, legal guardianship, or long-term foster care, and, as
3 needed, shall include transitional independent living services.

4 (j) As used in this chapter, family preservation services include
5 those services specified in Section 16500.5 to avoid or limit
6 out-of-home placement of children, and may include those services
7 specified in that section to place children in the least restrictive
8 environment possible.

9 (k) (1) (A) In any county electing to implement this
10 subdivision, all county welfare department employees who have
11 frequent and routine contact with children shall, by February 1,
12 1997, and all welfare department employees who are expected to
13 have frequent and routine contact with children and who are hired
14 on or after January 1, 1996, and all such employees whose duties
15 change after January 1, 1996, to include frequent and routine
16 contact with children, shall, if the employees provide services to
17 children who are alleged victims of abuse, neglect, or exploitation,
18 sign a declaration under penalty of perjury regarding any prior
19 criminal conviction, and shall provide a set of fingerprints to the
20 county welfare director.

21 (B) The county welfare director shall secure from the
22 Department of Justice a criminal record to determine whether the
23 employee has ever been convicted of a crime other than a minor
24 traffic violation. The Department of Justice shall deliver the
25 criminal record to the county welfare director.

26 (C) If it is found that the employee has been convicted of a
27 crime, other than a minor traffic violation, the county welfare
28 director shall determine whether there is substantial and convincing
29 evidence to support a reasonable belief that the employee is of
30 good character so as to justify frequent and routine contact with
31 children.

32 (D) No exemption shall be granted pursuant to subparagraph
33 (C) if the person has been convicted of a sex offense against a
34 minor, or has been convicted of an offense specified in Section
35 220, 243.4, 264.1, 273d, 288, or 289 of the Penal Code, or in
36 paragraph (1) of Section 273a of, or subdivision ~~(a) or (b)~~ (b) or
37 (c) of Section 368 of, the Penal Code, or has been convicted of an
38 offense specified in subdivision (c) of Section 667.5 of the Penal
39 Code. The county welfare director shall suspend such a person

1 from any duties involving frequent and routine contact with
2 children.

3 (E) Notwithstanding subparagraph (D), the county welfare
4 director may grant an exemption if the employee or prospective
5 employee, who was convicted of a crime against an individual
6 specified in paragraph (1) or (7) of subdivision (c) of Section 667.5
7 of the Penal Code, has been rehabilitated as provided in Section
8 4852.03 of the Penal Code and has maintained the conduct required
9 in Section 4852.05 of the Penal Code for at least 10 years and has
10 the recommendation of the district attorney representing the
11 employee's or prospective employee's county of residence, or if
12 the employee or prospective employee has received a certificate
13 of rehabilitation pursuant to Chapter 3.5 (commencing with Section
14 4852.01) of Title 6 of Part 3 of the Penal Code. In that case, the
15 county welfare director may give the employee or prospective
16 employee an opportunity to explain the conviction and shall
17 consider that explanation in the evaluation of the criminal
18 conviction record.

19 (F) If no criminal record information has been recorded, the
20 county welfare director shall cause a statement of that fact to be
21 included in that person's personnel file.

22 (2) For purposes of this subdivision, a conviction means a plea
23 or verdict of guilty or a conviction following a plea of nolo
24 contendere. Any action which the county welfare director is
25 permitted to take following the establishment of a conviction may
26 be taken when the time for appeal has elapsed, or the judgment of
27 conviction has been affirmed on appeal or when an order granting
28 probation is made suspending the imposition of sentence,
29 notwithstanding a subsequent order pursuant to Sections 1203.4
30 and 1203.4a of the Penal Code permitting the person to withdraw
31 his or her plea of guilty and to enter a plea of not guilty, or setting
32 aside the verdict of guilty, or dismissing the accusation,
33 information, or indictment. For purposes of this subdivision, the
34 record of a conviction, or a copy thereof certified by the clerk of
35 the court or by a judge of the court in which the conviction
36 occurred, shall be conclusive evidence of the conviction.

37 SEC. 6. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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