

AMENDED IN SENATE AUGUST 23, 2012
AMENDED IN SENATE AUGUST 21, 2012
AMENDED IN SENATE JUNE 18, 2012
AMENDED IN SENATE JUNE 4, 2012
AMENDED IN SENATE MARCH 21, 2012
AMENDED IN ASSEMBLY MARCH 21, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 40

Introduced by Assembly Member Yamada
(Principal coauthor: Senator Alquist)

December 6, 2010

An act to amend Sections 15630 and 15631 of, and to add Section 15610.67 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Yamada. Elder and dependent adult abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter, and authorizes any person who is not a mandated reporter, to report the abuse to the local ombudsman or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical

abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would require that, if the suspected abuse results in serious bodily injury, as defined, a mandated reporter make a telephone report to report suspected or alleged physical abuse, as defined, that occurs in a long-term care facility, to the local law enforcement agency, immediately, and no later than within 2 hours of the reporter observing, obtaining knowledge of, or suspecting the physical abuse. The bill would require that a written report be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within 2 hours of the reporter observing, obtaining knowledge of, or suspecting the physical abuse. The bill would require that, if the suspected abuse does not result in serious bodily injury, a mandated reporter make a report by telephone and in writing within 24 hours of the reporter observing, obtaining knowledge of, or suspecting the physical abuse, as specified.

Existing law authorizes a mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated occurred in a state mental hospital or a state developmental center, to report to the designated investigator of the State Department of State Hospitals or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsman.

This bill would delete the local ombudsman from the list of persons to whom the mandated reporter may report under these circumstances. This bill would authorize a person who is not a mandated reporter to report suspected or alleged abuse that occurred in a long-term care facility to both a long-term care ombudsman program or local law enforcement agency.

This bill would incorporate additional changes to Section 15630 of the Welfare and Institutions Code proposed by SB 1051, to be operative only if SB 1051 and this bill are both enacted, both bills become effective on or before January 1, 2013, and this bill is enacted last.

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 15610.67 is added to the Welfare and
2 Institutions Code, to read:

3 15610.67. "Serious bodily injury" means an injury involving
4 extreme physical pain, substantial risk of death, or protracted loss
5 or impairment of function of a bodily member, organ, or of mental
6 faculty, or requiring medical intervention, including, but not limited
7 to, hospitalization, surgery, or physical rehabilitation.

8 SEC. 2. Section 15630 of the Welfare and Institutions Code is
9 amended to read:

10 15630. (a) Any person who has assumed full or intermittent
11 responsibility for the care or custody of an elder or dependent
12 adult, whether or not he or she receives compensation, including
13 administrators, supervisors, and any licensed staff of a public or
14 private facility that provides care or services for elder or dependent
15 adults, or any elder or dependent adult care custodian, health
16 practitioner, clergy member, or employee of a county adult
17 protective services agency or a local law enforcement agency, is
18 a mandated reporter.

19 (b) (1) Any mandated reporter who, in his or her professional
20 capacity, or within the scope of his or her employment, has
21 observed or has knowledge of an incident that reasonably appears
22 to be physical abuse, as defined in Section 15610.63, abandonment,
23 abduction, isolation, financial abuse, or neglect, or is told by an
24 elder or dependent adult that he or she has experienced behavior,
25 including an act or omission, constituting physical abuse, as defined
26 in Section 15610.63, abandonment, abduction, isolation, financial
27 abuse, or neglect, or reasonably suspects that abuse, shall report
28 the known or suspected instance of abuse by telephone or through
29 a confidential Internet reporting tool, as authorized by Section

1 15658, immediately or as soon as practicably possible. If reported
2 by telephone, a written report shall be sent, or an Internet report
3 shall be made through the confidential Internet reporting tool
4 established in Section 15658, within two working days.

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

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

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

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

33 (iv) When applicable, reports made pursuant to clauses (i) and
34 (ii) shall be deemed to satisfy the reporting requirements of the
35 federal Elder Justice Act of 2009, as set out in Subtitle H of the
36 federal Patient Protection and Affordable Care Act (Public Law
37 111-148), Section 1418.91 of the Health and Safety Code, and
38 Section 72541 of Title 22 of *the* California Code of Regulations.
39 When a local law enforcement agency receives an initial report of
40 suspected abuse in a long-term care facility pursuant to this

1 subparagraph, the local law enforcement agency may coordinate
2 efforts with the local ombudsman to provide the most immediate
3 and appropriate response warranted to investigate the mandated
4 report. The local ombudsman and local law enforcement agencies
5 may collaborate to develop protocols to implement this
6 subparagraph.

7 (B) Notwithstanding the rulemaking provisions of Chapter 3.5
8 (commencing with Section 11340) of Part 1 of Division 3 of Title
9 2 of the Government Code, or any other law, the department may
10 implement subparagraph (A), in whole or in part, by means of
11 all-county letters, provider bulletins, or other similar instructions
12 without taking regulatory action.

13 (C) If the suspected or alleged abuse is abuse other than physical
14 abuse, and the abuse occurred in a long-term care facility, except
15 a state mental health hospital or a state developmental center, a
16 telephone report and a written report shall be made to the local
17 ombudsman or the local law enforcement agency.

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

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

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

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

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

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

4 (E) If the suspected or alleged abuse occurred in a state mental
5 hospital or a state developmental center, the report shall be made
6 to designated investigators of the State Department of State
7 Hospitals or the State Department of Developmental Services, or
8 to the local law enforcement agency.

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

12 (F) If the abuse has occurred any place other than one described
13 in subparagraph (A), the report shall be made to the adult protective
14 services agency or the local law enforcement agency.

15 (2) (A) A mandated reporter who is a clergy member who
16 acquires knowledge or reasonable suspicion of elder or dependent
17 adult abuse during a penitential communication is not subject to
18 paragraph (1). For purposes of this subdivision, "penitential
19 communication" means a communication that is intended to be in
20 confidence, including, but not limited to, a sacramental confession
21 made to a clergy member who, in the course of the discipline or
22 practice of his or her church, denomination, or organization is
23 authorized or accustomed to hear those communications and under
24 the discipline tenets, customs, or practices of his or her church,
25 denomination, or organization, has a duty to keep those
26 communications secret.

27 (B) This subdivision shall not be construed to modify or limit
28 a clergy member's duty to report known or suspected elder and
29 dependent adult abuse if he or she is acting in the capacity of a
30 care custodian, health practitioner, or employee of an adult
31 protective services agency.

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

39 (3) (A) A mandated reporter who is a physician and surgeon,
40 a registered nurse, or a psychotherapist, as defined in Section 1010

1 of the Evidence Code, shall not be required to report, pursuant to
2 paragraph (1), an incident if all of the following conditions exist:

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

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

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

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

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

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

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

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

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

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

33 (B) This paragraph shall not be construed to require a mandated
34 reporter to seek, nor to preclude a mandated reporter from seeking,
35 information regarding a known or suspected incident of abuse prior
36 to reporting. This paragraph shall apply only to those categories
37 of mandated reporters that the State Department of Public Health
38 determines, upon approval by the Bureau of Medi-Cal Fraud and
39 Elder Abuse and the state long-term care ombudsman, have access
40 to plans of care and have the training and experience necessary to

1 determine whether the conditions specified in this section have
2 been met.

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

9 (2) If the suspected or alleged abuse occurred in a long-term
10 care facility other than a state mental health hospital or a state
11 developmental center, the report may be made to the long-term
12 care ombudsman program. Except in an emergency, the local
13 ombudsman shall report any case of known or suspected abuse to
14 the State Department of Public Health and any case of known or
15 suspected criminal activity to the Bureau of Medi-Cal Fraud and
16 Elder Abuse, as soon as is practicable.

17 (3) If the suspected or alleged abuse occurred in a state mental
18 health hospital or a state developmental center, the report may be
19 made to the designated investigator of the State Department of
20 State Hospitals or the State Department of Developmental Services
21 or to a local law enforcement agency. Except in an emergency,
22 the local law enforcement agency shall report any case of known
23 or suspected criminal activity to the Bureau of Medi-Cal Fraud
24 and Elder Abuse, as soon as is practicable.

25 (4) If the suspected or alleged abuse occurred in a place other
26 than a place described in paragraph (2) or (3), the report may be
27 made to the county adult protective services agency.

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

31 (d) If two or more mandated reporters are present and jointly
32 have knowledge or reasonably suspect that types of abuse of an
33 elder or a dependent adult for which a report is or is not mandated
34 have occurred, and there is agreement among them, the telephone
35 report or Internet report, as authorized by Section 15658, may be
36 made by a member of the team selected by mutual agreement, and
37 a single report may be made and signed by the selected member
38 of the reporting team. Any member who has knowledge that the
39 member designated to report has failed to do so shall thereafter
40 make the report.

1 (e) A telephone report or Internet report, as authorized by
2 Section 15658, of a known or suspected instance of elder or
3 dependent adult abuse shall include, if known, the name of the
4 person making the report, the name and age of the elder or
5 dependent adult, the present location of the elder or dependent
6 adult, the names and addresses of family members or any other
7 adult responsible for the elder's or dependent adult's care, the
8 nature and extent of the elder's or dependent adult's condition, the
9 date of the incident, and any other information, including
10 information that led that person to suspect elder or dependent adult
11 abuse, as requested by the agency receiving the report.

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

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

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

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

35 (h) Failure to report, or impeding or inhibiting a report of,
36 physical abuse, as defined in Section 15610.63, abandonment,
37 abduction, isolation, financial abuse, or neglect of an elder or
38 dependent adult, in violation of this section, is a misdemeanor,
39 punishable by not more than six months in the county jail, by a
40 fine of not more than one thousand dollars (\$1,000), or by both

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

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

16 *SEC. 2.5. Section 15630 of the Welfare and Institutions Code*
17 *is amended to read:*

18 15630. (a) Any person who has assumed full or intermittent
19 responsibility for the care or custody of an elder or dependent
20 adult, whether or not he or she receives compensation, including
21 administrators, supervisors, and any licensed staff of a public or
22 private facility that provides care or services for elder or dependent
23 adults, or any elder or dependent adult care custodian, health
24 practitioner, clergy member, or employee of a county adult
25 protective services agency or a local law enforcement agency, is
26 a mandated reporter.

27 (b) (1) Any mandated reporter who, in his or her professional
28 capacity, or within the scope of his or her employment, has
29 observed or has knowledge of an incident that reasonably appears
30 to be physical abuse, as defined in Section 15610.63, abandonment,
31 abduction, isolation, financial abuse, or neglect, or is told by an
32 elder or dependent adult that he or she has experienced behavior,
33 including an act or omission, constituting physical abuse, as defined
34 in Section 15610.63, abandonment, abduction, isolation, financial
35 abuse, or neglect, or reasonably suspects that abuse, shall report
36 the known or suspected instance of abuse by telephone or through
37 a confidential Internet reporting tool, as authorized by Section
38 15658, immediately or as soon as practicably possible. If reported
39 by telephone, a written report shall be sent, or an Internet report
40 shall be made through the confidential Internet reporting tool

1 established in Section 15658, within two working days, as follows
2 days:

3 (A) If the *suspected or alleged abuse is physical abuse, as*
4 *defined in Section 15610.63, and the abuse has occurred in a*
5 *long-term care facility, except a state mental health hospital or a*
6 *state developmental center, the report shall be made to the local*
7 ~~*ombudsperson or the local law enforcement agency.*~~ *following*
8 *shall occur:*

9 (i) *If the suspected abuse results in serious bodily injury, a*
10 *telephone report shall be made to the local law enforcement agency*
11 *immediately, and no later than within two hours of the mandated*
12 *reporter observing, obtaining knowledge of, or suspecting the*
13 *physical abuse, and a written report shall be made to the local*
14 *ombudsman, the corresponding licensing agency, and the local*
15 *law enforcement agency within two hours of the mandated reporter*
16 *observing, obtaining knowledge of, or suspecting the physical*
17 *abuse.*

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

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

33 (iv) *When applicable, reports made pursuant to clauses (i) and*
34 *(ii) shall be deemed to satisfy the reporting requirements of the*
35 *federal Elder Justice Act of 2009, as set out in Subtitle H of the*
36 *federal Patient Protection and Affordable Care Act (Public Law*
37 *111-148), Section 1418.91 of the Health and Safety Code, and*
38 *Section 72541 of Title 22 of the California Code of Regulations.*
39 *When a local law enforcement agency receives an initial report*
40 *of suspected abuse in a long-term care facility pursuant to this*

1 *subparagraph, the local law enforcement agency may coordinate*
2 *efforts with the local ombudsman to provide the most immediate*
3 *and appropriate response warranted to investigate the mandated*
4 *report. The local ombudsman and local law enforcement agencies*
5 *may collaborate to develop protocols to implement this*
6 *subparagraph.*

7 *(B) Notwithstanding the rulemaking provisions of Chapter 3.5*
8 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
9 *2 of the Government Code, or any other law, the department may*
10 *implement subparagraph (A), in whole or in part, by means of*
11 *all-county letters, provider bulletins, or other similar instructions*
12 *without taking regulatory action.*

13 *(C) If the suspected or alleged abuse is abuse other than*
14 *physical abuse, and the abuse occurred in a long-term care facility,*
15 *except a state mental health hospital or a state developmental*
16 *center, a telephone report and a written report shall be made to*
17 *the local ombudsman or the local law enforcement agency.*

18 ~~The~~
19 *(D) With regard to abuse reported pursuant to subparagraphs*
20 *(A) and (C), the local-ombudsperson ombudsman and the local*
21 *law enforcement agency shall, as soon as practicable, except in*
22 *the case of an emergency or pursuant to a report required to be*
23 *made pursuant to clause (v), in which case these actions shall be*
24 *taken immediately, do all of the following:*

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

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

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

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

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

~~(B)~~

(E) 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 State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency.

~~Except~~

(i) *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.

(ii) *Mandated reporters of the State Department of Developmental Services shall immediately report suspected abuse to the Office of Protective Services or to the local law enforcement agency.*

~~(C)~~

(F) 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~~ This subdivision shall *not* be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse ~~when~~ *if* he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or

1 part-time basis in a long-term care facility or does not have care
2 or custody of an elder or dependent adult shall not be responsible
3 for reporting abuse or neglect that is not reasonably observable or
4 discernible to a reasonably prudent person having no specialized
5 training or experience in elder or dependent care.

6 (3) (A) A mandated reporter who is a physician and surgeon,
7 a registered nurse, or a psychotherapist, as defined in Section 1010
8 of the Evidence Code, shall not be required to report, pursuant to
9 paragraph (1), an incident ~~where~~ *if* all of the following conditions
10 exist:

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

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

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

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

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

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

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

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

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

39 (iv) The mandated reporter reasonably believes that the injury
40 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 Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care—~~ombudsperson~~ *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—~~ombudsperson~~ *ombudsman* program. Except in an emergency, the local—~~ombudsperson~~ *ombudsman* shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

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

1 (d) ~~When~~*If* two or more mandated reporters are present and
2 jointly have knowledge or reasonably suspect that types of abuse
3 of an elder or a dependent adult for which a report is or is not
4 mandated have occurred, and ~~when~~ there is agreement among
5 them, the telephone report or Internet report, as authorized by
6 Section 15658, may be made by a member of the team selected
7 by mutual agreement, and a single report may be made and signed
8 by the selected member of the reporting team. Any member who
9 has knowledge that the member designated to report has failed to
10 do so shall thereafter make the report.

11 (e) A telephone report or Internet report, as authorized by
12 Section 15658, of a known or suspected instance of elder or
13 dependent adult abuse shall include, if known, the name of the
14 person making the report, the name and age of the elder or
15 dependent adult, the present location of the elder or dependent
16 adult, the names and addresses of family members or any other
17 adult responsible for the elder's or dependent adult's care, the
18 nature and extent of the elder's or dependent adult's condition, the
19 date of the incident, and any other information, including
20 information that led that person to suspect elder or dependent adult
21 abuse, as requested by the agency receiving the report.

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

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

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

39 (3) The requirement to disclose investigative reports pursuant
40 to this subdivision shall not include the disclosure of social services

records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

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

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

SEC. 3. Section 15631 of the Welfare and Institutions Code is amended to read:

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

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

1 *SEC. 4. Section 2.5 of this bill incorporates amendments to*
2 *Section 15630 of the Welfare and Institutions Code proposed by*
3 *this bill and Senate Bill 1051. It shall only become operative if (1)*
4 *both bills are enacted and become effective on or before January*
5 *1, 2013, (2) each bill amends Section 15630 of the Welfare and*
6 *Institutions Code, and (3) this bill is enacted after Senate Bill 1051,*
7 *in which case Section 15630 of the Welfare and Institutions Code,*
8 *as amended by Senate Bill 1051, shall remain operative only until*
9 *the operative date of this bill, at which time Section 2.5 of this bill*
10 *shall become operative, and Section 2 of this bill shall not become*
11 *operative.*

12 ~~SEC. 4.~~

13 *SEC. 5. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution for certain*
15 *costs that may be incurred by a local agency or school district*
16 *because, in that regard, this act creates a new crime or infraction,*
17 *eliminates a crime or infraction, or changes the penalty for a crime*
18 *or infraction, within the meaning of Section 17556 of the*
19 *Government Code, or changes the definition of a crime within the*
20 *meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

22 *However, if the Commission on State Mandates determines that*
23 *this act contains other costs mandated by the state, reimbursement*
24 *to local agencies and school districts for those costs shall be made*
25 *pursuant to Part 7 (commencing with Section 17500) of Division*
26 *4 of Title 2 of the Government Code.*