

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 28, 2012

SENATE BILL

No. 1051

Introduced by Senators Liu and Emmerson

February 8, 2012

An act to amend Section 13010 of the Penal Code, and to amend Sections 4427.5 and 15630 of, and to add Sections 4023 and 4415.5 to, the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1051, as amended, Liu. Reports of death, injury, and abuse: developmental centers and state hospitals: mandated reporters.

Existing law requires the Department of Justice, among other duties, to periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes the department deems necessary in the design of criminal justice statistics systems, including new techniques of collection and processing made possible by automation.

This bill would require the department to include data regarding a crime victim's self-report of disability status in the criminal justice statistics, no later than at the next revision of the department's uniform crime report, as specified.

Existing law vests in the State Department of Developmental Services jurisdiction over state hospitals referred to as developmental centers for the provision of residential care to persons with developmental disabilities. Existing law requires a developmental center to immediately report all resident deaths and serious injuries of unknown origin to the appropriate local law enforcement agency. Existing law establishes the

Office of Protective Services within the State Department of Developmental Services.

~~This bill would require the department to employ a~~ *rename a certain position within the Office of Protective Services as the Director of Protective Services,* ~~with require the director to meet specified qualifications, to and require that the director be appointed by and serve at the pleasure of the Director of Developmental Services~~ *Secretary of California Health and Human Services, as specified.*

~~This bill would require a developmental center the department to immediately report criminal conduct suspected or established by the Office of Protective Services and to report certain events involving death or harm involving a developmental center resident to a designated protection and advocacy agency. The bill also would require the State Department of State Hospitals to report the same categories of events to the protection and advocacy agency, with respect to a resident of a state mental hospital.~~

~~Existing law requires specified people, known as mandated reporters, to report cases of elder or dependent adult abuse, as defined. Existing law requires mandated reporters to report the abuse by telephone, or through a confidential Internet reporting tool, immediately or as soon as practicably possible. Failure to make a report as required by existing law is a misdemeanor.~~

~~This bill would delete the option of a mandated reporter to make a telephone or Internet report of abuse as soon as practicably possible, thus requiring these reports to be made immediately~~ *require mandated reporters in the State Department of Developmental Services to immediately report suspected abuse to the Office of Protective Services or to the local law enforcement agency.* By creating new duties for local officials, this bill would impose a state-mandated local program. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

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

This bill would provide that 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 13010 of the Penal Code is amended to
2 read:
3 13010. It shall be the duty of the department:
4 (a) To collect data necessary for the work of the department
5 from all persons and agencies mentioned in Section 13020 and
6 from any other appropriate source.
7 (b) To prepare and distribute to all those persons and agencies,
8 cards, forms, or electronic means used in reporting data to the
9 department. The cards, forms, or electronic means may, in addition
10 to other items, include items of information needed by federal
11 bureaus or departments engaged in the development of national
12 and uniform criminal statistics.
13 (c) To recommend the form and content of records which must
14 be kept by those persons and agencies in order to ensure the correct
15 reporting of data to the department.
16 (d) To instruct those persons and agencies in the installation,
17 maintenance, and use of those records and in the reporting of data
18 therefrom to the department.
19 (e) To process, tabulate, analyze, and interpret the data collected
20 from those persons and agencies.
21 (f) To supply, at their request, to federal bureaus or departments
22 engaged in the collection of national criminal statistics data they
23 need from this state.
24 (g) To present to the Governor, on or before July 1st, an annual
25 report containing the criminal statistics of the preceding calendar
26 year and to present at other times as the Attorney General may
27 approve reports on special aspects of criminal statistics. A sufficient
28 number of copies of all reports shall be prepared to enable the
29 Attorney General to send a copy to all public officials in the state
30 dealing with criminals and to distribute them generally in channels
31 where they will add to the public enlightenment.
32 (h) (1) To periodically review the requirements of units of
33 government using criminal justice statistics, and to make

1 recommendations for changes it deems necessary in the design of
2 criminal justice statistics systems, including new techniques of
3 collection and processing made possible by automation.

4 (2) To include in the criminal justice statistics, no later than at
5 the next revision of the uniform crime report following the effective
6 date of the act that added this paragraph, data regarding a crime
7 victim's self-report of disability status.

8 SEC. 2. Section 4023 is added to the Welfare and Institutions
9 Code, to read:

10 4023. (a) The State Department of State Hospitals shall report
11 to the agency designated in subdivision (i) of Section 4900 the
12 following incidents involving a resident of a state mental hospital:

13 (1) Any unexpected or suspicious death.

14 (2) Any sexual assault allegation implicating the involvement
15 of a state mental hospital employee or an employee of the
16 Department of Corrections and Rehabilitation.

17 (3) Any report made to the local law enforcement agency.

18 (b) A report pursuant to this section shall be made no later than
19 the close of the first business day following the discovery of the
20 reportable incident.

21 SEC. 3. Section 4415.5 is added to the Welfare and Institutions
22 Code, to read:

23 4415.5. (a) ~~The department shall employ a Director of~~
24 ~~Protective Services with~~ *chief of the Office of Protective Services,*
25 *who has* the responsibility and authority to manage all protective
26 service components within the department's law enforcement and
27 fire protection divisions, including those at each state
28 developmental center, *shall be known as the Director of Protective*
29 *Services.* The director shall be an experienced law enforcement
30 officer with a Peace Officers Standards and Training Management
31 Certificate or higher, and with extensive management experience
32 directing uniformed peace officer and investigation operations.

33 (b) The Director of Protective Services shall be appointed by,
34 and shall serve at the pleasure of, the Secretary of California Health
35 and Human Services.

36 SEC. 4. Section 4427.5 of the Welfare and Institutions Code
37 is amended to read:

38 4427.5. (a) (1) A developmental center shall immediately
39 report all resident deaths, ~~possible criminal conduct suspected or~~
40 ~~established by the Office of Protective Services,~~ and serious injuries

1 of unknown origin to the appropriate local law enforcement agency,
2 which may, at its discretion, conduct an independent investigation.

3 (2) The reporting requirements of this subdivision are in addition
4 to, and do not substitute for, the reporting requirements of
5 mandated reporters.

6 (b) (1) The department shall report to the agency designated in
7 subdivision (i) of Section 4900 any of the following incidents
8 involving a resident of a developmental center:

9 (A) Any unexpected or suspicious death.

10 (B) Any sexual assault allegation implicating the involvement
11 of a developmental center or department employee.

12 (C) Any report made to the local law enforcement agency.

13 (2) A report pursuant to this subdivision shall be made no later
14 than the close of the first business day following the discovery of
15 the reportable incident.

16 (c) The department shall do both of the following:

17 (1) Annually provide written information to every developmental
18 center employee regarding all of the following:

19 (A) The statutory and departmental requirements for mandatory
20 reporting of suspected or known abuse.

21 (B) The rights and protections afforded to individuals' reporting
22 of suspected or known abuse.

23 (C) The penalties for failure to report suspected or known abuse.

24 (D) The telephone numbers for reporting suspected or known
25 abuse or neglect to designated investigators of the department and
26 to local law enforcement agencies.

27 (2) On or before August 1, 2001, in consultation with employee
28 organizations, advocates, consumers, and family members, develop
29 a poster that encourages staff, residents, and visitors to report
30 suspected or known abuse and provides information on how to
31 make these reports.

32 SEC. 5. Section 15630 of the Welfare and Institutions Code is
33 amended to read:

34 15630. (a) Any person who has assumed full or intermittent
35 responsibility for the care or custody of an elder or dependent
36 adult, whether or not he or she receives compensation, including
37 administrators, supervisors, and any licensed staff of a public or
38 private facility that provides care or services for elder or dependent
39 adults, or any elder or dependent adult care custodian, health
40 practitioner, clergy member, or employee of a county adult

1 protective services agency or a local law enforcement agency, is
2 a mandated reporter.

3 (b) (1) Any mandated reporter who, in his or her professional
4 capacity, or within the scope of his or her employment, has
5 observed or has knowledge of an incident that reasonably appears
6 to be physical abuse, as defined in Section 15610.63, abandonment,
7 abduction, isolation, financial abuse, or neglect, or is told by an
8 elder or dependent adult that he or she has experienced behavior,
9 including an act or omission, constituting physical abuse, as defined
10 in Section 15610.63, abandonment, abduction, isolation, financial
11 abuse, or neglect, or reasonably suspects that abuse, shall report
12 the known or suspected instance of abuse by telephone or through
13 a confidential Internet reporting tool, as authorized by Section
14 15658, immediately *or as soon as practicably possible*. If reported
15 by telephone, a written report shall be sent, or an Internet report
16 shall be made through the confidential Internet reporting tool
17 established in Section 15658, within two working days, as follows:

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

22 The local ombudsperson and the local law enforcement agency
23 shall, as soon as practicable, except in the case of an emergency
24 or pursuant to a report required to be made pursuant to clause (v),
25 in which case these actions shall be taken immediately, do all of
26 the following:

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

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

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

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

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

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

11 **Except**

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

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

19 (C) If the abuse has occurred any place other than one described
20 in subparagraph (A), the report shall be made to the adult protective
21 services agency or the local law enforcement agency.

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

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

39 (C) Notwithstanding any other provision in this section, a clergy
40 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 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 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.

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

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

17 (2) If the suspected or alleged abuse occurred in a long-term
18 care facility other than a state mental health hospital or a state
19 developmental center, the report may be made to the long-term
20 care ombudsperson program. Except in an emergency, the local
21 ombudsperson shall report any case of known or suspected abuse
22 to the State Department of Public Health and 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 (3) If the suspected or alleged abuse occurred in a state mental
26 health hospital or a state developmental center, the report may be
27 made to the designated investigator of the State Department of
28 Mental Health or the State Department of Developmental Services
29 or to a local law enforcement agency or to the local ombudsperson.
30 Except in an emergency, the local ombudsperson and the local law
31 enforcement agency shall report any case of known or suspected
32 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse,
33 as soon as is practicable.

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

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

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

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

5 (h) Failure to report, or impeding or inhibiting a report of,
6 physical abuse, as defined in Section 15610.63, abandonment,
7 abduction, isolation, financial abuse, or neglect of an elder or
8 dependent adult, in violation of this section, is a misdemeanor,
9 punishable by not more than six months in the county jail, by a
10 fine of not more than one thousand dollars (\$1,000), or by both
11 that fine and imprisonment. Any mandated reporter who willfully
12 fails to report, or impedes or inhibits a report of, physical abuse,
13 as defined in Section 15610.63, abandonment, abduction, isolation,
14 financial abuse, or neglect of an elder or dependent adult, in
15 violation of this section, where that abuse results in death or great
16 bodily injury, shall be punished by not more than one year in a
17 county jail, by a fine of not more than five thousand dollars
18 (\$5,000), or by both that fine and imprisonment. If a mandated
19 reporter intentionally conceals his or her failure to report an
20 incident known by the mandated reporter to be abuse or severe
21 neglect under this section, the failure to report is a continuing
22 offense until a law enforcement agency specified in paragraph (1)
23 of subdivision (b) of Section 15630 discovers the offense.

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

26 SEC. 6. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution for certain
28 costs that may be incurred by a local agency or school district
29 because, in that regard, this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty for a crime
31 or infraction, within the meaning of Section 17556 of the
32 Government Code, or changes the definition of a crime within the
33 meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 However, if the Commission on State Mandates determines that
36 this act contains other costs mandated by the state, reimbursement
37 to local agencies and school districts for those costs shall be made
38 pursuant to Part 7 (commencing with Section 17500) of Division
39 4 of Title 2 of the Government Code.

1 SEC. 7. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 In order to ensure that the applicable investigative structure
6 adequately protects residents of developmental centers and other
7 vulnerable persons from harm at the earliest possible time, it is
8 necessary for this act to take effect immediately.

O