

AMENDED IN ASSEMBLY JUNE 18, 2012

AMENDED IN SENATE MAY 10, 2012

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 28, 2012

SENATE BILL

No. 1051

**Introduced by Senators Liu and Emmerson
(Coauthors: Senators Anderson, *Hancock*, and Strickland)**

February 8, 2012

An act 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 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 rename a certain position within the Office of Protective Services as the Director of Protective Services, require the director to meet specified qualifications, and require that the director

be appointed by and serve at the pleasure of the Secretary of California Health and Human Services, as specified.

This bill would require the department 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. Failure to make a report as required by existing law is a misdemeanor.

This bill would 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 4023 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 4023. (a) The State Department of State Hospitals shall report
- 4 to the agency described in subdivision (i) of Section 4900 the
- 5 following incidents involving a resident of a state mental hospital:
- 6 (1) Any unexpected or suspicious death.

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

4 (3) Any report made to the local law enforcement agency *that*
5 *involves physical abuse, as defined in Section 15610.63, in which*
6 *a staff member is implicated.*

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

10 SEC. 2. Section 4415.5 is added to the Welfare and Institutions
11 Code, to read:

12 4415.5. (a) The Chief of the Office of Protective Services,
13 who has the responsibility and authority to manage all protective
14 service components within the department's law enforcement and
15 fire protection divisions, including those at each state
16 developmental center, shall be known as the Director of Protective
17 Services. The director shall be an experienced law enforcement
18 officer with a Peace Officers Standards and Training Management
19 Certificate or higher, and with extensive management experience
20 directing uniformed peace officer and investigation operations.

21 (b) The Director of Protective Services shall be appointed by,
22 and shall serve at the pleasure of, the Secretary of California Health
23 and Human Services.

24 SEC. 3. Section 4427.5 of the Welfare and Institutions Code
25 is amended to read:

26 4427.5. (a) (1) A developmental center shall immediately
27 report all resident deaths and serious injuries of unknown origin
28 to the appropriate local law enforcement agency, which may, at
29 its discretion, conduct an independent investigation.

30 (2) The reporting requirements of this subdivision are in addition
31 to, and do not substitute for, the reporting requirements of
32 mandated reporters.

33 (b) (1) The department shall report to the agency described in
34 subdivision (i) of Section 4900 any of the following incidents
35 involving a resident of a developmental center:

36 (A) Any unexpected or suspicious death.

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

1 (C) Any report made to the local law enforcement agency *that*
2 *involves physical abuse, as defined in Section 15610.63, in which*
3 *a staff member is implicated.*

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

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

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

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

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

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

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

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

23 SEC. 4. Section 15630 of the Welfare and Institutions Code is
24 amended to read:

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

34 (b) (1) Any mandated reporter who, in his or her professional
35 capacity, or within the scope of his or her employment, has
36 observed or has knowledge of an incident that reasonably appears
37 to be physical abuse, as defined in Section 15610.63, abandonment,
38 abduction, isolation, financial abuse, or neglect, or is told by an
39 elder or dependent adult that he or she has experienced behavior,
40 including an act or omission, constituting physical abuse, as defined

1 in Section 15610.63, abandonment, abduction, isolation, financial
2 abuse, or neglect, or reasonably suspects that abuse, shall report
3 the known or suspected instance of abuse by telephone or through
4 a confidential Internet reporting tool, as authorized by Section
5 15658, immediately or as soon as practicably possible. If reported
6 by telephone, a written report shall be sent, or an Internet report
7 shall be made through the confidential Internet reporting tool
8 established in Section 15658, within two working days, as follows:

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

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

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

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

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

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

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

36 (B) If the suspected or alleged abuse occurred in a state mental
37 hospital or a state developmental center, the report shall be made
38 to designated investigators of the State Department of Mental
39 Health or the State Department of Developmental Services, or to
40 the local law enforcement agency.

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

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

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

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

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

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

35 (3) (A) A mandated reporter who is a physician and surgeon,
36 a registered nurse, or a psychotherapist, as defined in Section 1010
37 of the Evidence Code, shall not be required to report, pursuant to
38 paragraph (1), an incident where all of the following conditions
39 exist:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (d) When two or more mandated reporters are present and jointly
31 have knowledge or reasonably suspect that types of abuse of an
32 elder or a dependent adult for which a report is or is not mandated
33 have occurred, and when there is agreement among them, the
34 telephone report or Internet report, as authorized by Section 15658,
35 may be made by a member of the team selected by mutual
36 agreement, and a single report may be made and signed by the
37 selected member of the reporting team. Any member who has
38 knowledge that the member designated to report has failed to do
39 so shall thereafter 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, where that abuse results in death or great
6 bodily injury, shall be punished by not more than one year in a
7 county jail, by a fine of not more than five thousand dollars
8 (\$5,000), or by both that fine and imprisonment. If a mandated
9 reporter intentionally conceals his or her failure to report an
10 incident known by the mandated reporter to be abuse or severe
11 neglect under this section, the failure to report is a continuing
12 offense until a law enforcement agency specified in paragraph (1)
13 of subdivision (b) 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. 5. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution for certain
18 costs that may be incurred by a local agency or school district
19 because, in that regard, this act creates a new crime or infraction,
20 eliminates a crime or infraction, or changes the penalty for a crime
21 or infraction, within the meaning of Section 17556 of the
22 Government Code, or changes the definition of a crime within the
23 meaning of Section 6 of Article XIII B of the California
24 Constitution.

25 However, if the Commission on State Mandates determines that
26 this act contains other costs mandated by the state, reimbursement
27 to local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.

30 SEC. 6. This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety within
32 the meaning of Article IV of the Constitution and shall go into
33 immediate effect. The facts constituting the necessity are:

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