

AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN ASSEMBLY AUGUST 6, 2012

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)
(Coauthor: Assembly Member Conway)

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.

This bill would incorporate additional changes to Section 4427.5 of the Welfare and Institutions Code proposed by SB 1522, to be operative only if SB 1522 and this bill are both enacted, both bills become effective on or before January 1, 2013, and this bill is enacted last. This bill would also incorporate additional changes to Section 15630 of the Welfare and Institutions Code proposed by AB 40, to be operative only if AB 40 and this bill are both enacted, both bills become effective on or before January 1, 2013, and this bill is enacted last.

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: 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, *regardless of whether*
7 *the cause is immediately known.*

8 (2) Any allegation of sexual assault, as defined in Section
9 15610.63, ~~implicating the involvement of a state mental hospital~~
10 ~~employee or in which the alleged perpetrator is an employee or~~
11 *contractor of a state mental hospital or of the Department of*
12 *Corrections and Rehabilitation.*

13 (3) Any report made to the local law enforcement agency *in the*
14 *jurisdiction in which the facility is located* that involves physical
15 abuse, as defined in Section 15610.63, in which a staff member is
16 implicated.

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

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

22 4415.5. (a) The Chief of the Office of Protective Services,
23 who has the responsibility and authority to manage all protective
24 service components within the department's law enforcement and
25 fire protection divisions, including those at each state
26 developmental center, shall be known as the Director of Protective
27 Services. The director shall be an experienced law enforcement
28 officer with a Peace Officers Standards and Training Management
29 Certificate or higher, and with extensive management experience
30 directing uniformed peace officer and investigation operations.

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

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

3 4427.5. (a) (1) A developmental center shall immediately
4 report all resident deaths and serious injuries of unknown origin
5 to the appropriate local law enforcement agency, which may, at
6 its discretion, conduct an independent investigation.

7 (2) The reporting requirements of this subdivision are in addition
8 to, and do not substitute for, the reporting requirements of
9 mandated reporters.

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

13 (A) Any unexpected or suspicious death, *regardless of whether*
14 *the cause is immediately known.*

15 (B) Any allegation of sexual assault, as defined in Section
16 15610.63, ~~implicating the involvement of~~ *in which the alleged*
17 *perpetrator is a developmental center or department employee or*
18 *contractor.*

19 (C) Any report made to the local law enforcement agency *in*
20 *the jurisdiction in which the facility is located* that involves
21 physical abuse, as defined in Section 15610.63, in which a staff
22 member is implicated.

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

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

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

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

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

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

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

37 (2) On or before August 1, 2001, in consultation with employee
38 organizations, advocates, consumers, and family members, develop
39 a poster that encourages staff, residents, and visitors to report

1 suspected or known abuse and provides information on how to
2 make these reports.

3 *SEC. 3.5. Section 4427.5 of the Welfare and Institutions Code*
4 *is amended to read:*

5 4427.5. (a) (1) A developmental center shall immediately
6 ~~report all resident deaths and serious injuries of unknown origin~~
7 ~~to the appropriate~~ *the following incidents involving a resident to*
8 ~~the local law enforcement agency, which may, at its discretion,~~
9 ~~conduct an independent investigation.~~ *agency having jurisdiction*
10 *over the city or county in which the developmental center is*
11 *located, regardless of whether the Office of Protective Services*
12 *has investigated the facts and circumstances relating to the*
13 *incident:*

14 (A) A death.

15 (B) A sexual assault, as defined in Section 15610.63.

16 (C) An assault with a deadly weapon, as described in Section
17 245 of the Penal Code, by a nonresident of the developmental
18 center.

19 (D) An assault with force likely to produce great bodily injury,
20 as described in Section 245 of the Penal Code.

21 (E) An injury to the genitals when the cause of the injury is
22 undetermined.

23 (F) A broken bone, when the cause of the break is undetermined.

24 (2) *If the incident is reported to the law enforcement agency by*
25 *telephone, a written report of the incident shall also be submitted*
26 *to the agency, within two working days.*

27 ~~(2)~~

28 (3) *The reporting requirements of this subdivision are in addition*
29 *to, and do not substitute for, the reporting requirements of*
30 ~~mandated reporters~~ *reporters, and any other reporting and*
31 *investigative duties of the developmental center and the department*
32 *as required by law.*

33 (4) *Nothing in this subdivision shall be interpreted to prevent*
34 *the developmental center from reporting any other criminal act*
35 *constituting a danger to the health or safety of the residents of the*
36 *developmental center to the local law enforcement agency.*

37 (b) (1) *The department shall report to the agency described in*
38 *subdivision (i) of Section 4900 any of the following incidents*
39 *involving a resident of a developmental center:*

1 (A) Any unexpected or suspicious death, regardless of whether
 2 the cause is immediately known.

3 (B) Any allegation of sexual assault as defined in Section
 4 15610.63, in which the alleged perpetrator is a developmental
 5 center or department employee or contractor.

6 (C) Any report made to the local law enforcement agency in the
 7 jurisdiction in which the facility is located that involves physical
 8 abuse, as defined in Section 15610.63, in which a staff member is
 9 implicated.

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

13 ~~(b)~~

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

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

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

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

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

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

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

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

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

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

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

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

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 (B) 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 (i) Except in an emergency, the local law enforcement agency
10 shall, 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 (ii) Mandated reporters of the State Department of
13 Developmental Services shall immediately report suspected abuse
14 to the Office of Protective Services or to the local law enforcement
15 agency.

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

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

31 (B) ~~Nothing in this~~ This subdivision shall *not* be construed to
32 modify or limit a clergy member's duty to report known or
33 suspected elder and dependent adult abuse ~~when if~~ he or she is
34 acting in the capacity of a care custodian, health practitioner, or
35 employee of an adult protective services agency.

36 (C) Notwithstanding any other provision in this section, a clergy
37 member who is not regularly employed on either a full-time or
38 part-time basis in a long-term care facility or does not have care
39 or custody of an elder or dependent adult shall not be responsible
40 for reporting abuse or neglect that is not reasonably observable or

1 discernible to a reasonably prudent person having no specialized
2 training or experience in elder or dependent care.

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

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

12 (ii) The mandated reporter is not aware of any independent
13 evidence that corroborates the statement that the abuse has
14 occurred.

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

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

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

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

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

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

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

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

38 (B) This paragraph shall not be construed to require a mandated
39 reporter to seek, nor to preclude a mandated reporter from seeking,
40 information regarding a known or suspected incident of abuse prior

1 to reporting. This paragraph shall apply only to those categories
2 of mandated reporters that the State Department of Public Health
3 determines, upon approval by the Bureau of Medi-Cal Fraud and
4 Elder Abuse and the state long-term care ombudsperson, have
5 access to plans of care and have the training and experience
6 necessary to determine whether the conditions specified in this
7 section have been met.

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

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

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

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

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

37 (d) ~~When~~*If* two or more mandated reporters are present and
38 jointly have knowledge or reasonably suspect that types of abuse
39 of an elder or a dependent adult for which a report is or is not
40 mandated have occurred, and ~~when~~ there is agreement among

1 them, the telephone report or Internet report, as authorized by
2 Section 15658, may be made by a member of the team selected
3 by mutual agreement, and a single report may be made and signed
4 by the selected member of the reporting team. Any member who
5 has knowledge that the member designated to report has failed to
6 do so shall thereafter make the report.

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

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

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

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

35 (3) The requirement to disclose investigative reports pursuant
36 to this subdivision shall not include the disclosure of social services
37 records or case files that are confidential, nor shall this subdivision
38 be construed to allow disclosure of any reports or records if the
39 disclosure would be prohibited by any other provision of state or
40 federal law.

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

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

22 *SEC. 4.5. Section 15630 of the Welfare and Institutions Code*
23 *is amended to read:*

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

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

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

9 (A) If the *suspected or alleged abuse is physical abuse, as*
10 *defined in Section 15610.63, and the abuse has occurred in a*
11 *long-term care facility, except a state mental health hospital or a*
12 *state developmental center, the report shall be made to the local*
13 *ombudsman or the local law enforcement agency, following*
14 *shall occur:*

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

24 (ii) *If the suspected abuse does not result in serious bodily*
25 *injury, a telephone report shall be made to the local law*
26 *enforcement agency within 24 hours of the mandated reporter*
27 *observing, obtaining knowledge of, or suspecting the physical*
28 *abuse, and a written report shall be made to the local ombudsman,*
29 *the corresponding licensing agency, and the local law enforcement*
30 *agency within 24 hours of the mandated reporter observing,*
31 *obtaining knowledge of, or suspecting the physical abuse.*

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

39 (iv) *When applicable, reports made pursuant to clauses (i) and*
40 *(ii) shall be deemed to satisfy the reporting requirements of the*

1 *federal Elder Justice Act of 2009, as set out in Subtitle H of the*
2 *federal Patient Protection and Affordable Care Act (Public Law*
3 *111-148), Section 1418.91 of the Health and Safety Code, and*
4 *Section 72541 of Title 22 of California Code of Regulations. When*
5 *a local law enforcement agency receives an initial report of*
6 *suspected abuse in a long-term care facility pursuant to this*
7 *subparagraph, the local law enforcement agency may coordinate*
8 *efforts with the local ombudsman to provide the most immediate*
9 *and appropriate response warranted to investigate the mandated*
10 *report. The local ombudsman and local law enforcement agencies*
11 *may collaborate to develop protocols to implement this*
12 *subparagraph.*

13 (B) *Notwithstanding the rulemaking provisions of Chapter 3.5*
14 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
15 *2 of the Government Code, or any other law, the department may*
16 *implement subparagraph (A), in whole or in part, by means of*
17 *all-county letters, provider bulletins, or other similar instructions*
18 *without taking regulatory action.*

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

24 ~~The~~
25 (D) *With regard to abuse reported pursuant to subparagraphs*
26 *(A) and (C), the local ~~ombudsman~~ ombudsman and the local*
27 *law enforcement agency shall, as soon as practicable, except in*
28 *the case of an emergency or pursuant to a report required to be*
29 *made pursuant to clause (v), in which case these actions shall be*
30 *taken immediately, do all of the following:*

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

35 (ii) *Report to the State Department of Social Services any case*
36 *of known or suspected abuse occurring in a residential care facility*
37 *for the elderly, as defined in Section 1569.2 of the Health and*
38 *Safety Code, or in an adult day-care facility program, as defined*
39 *in paragraph (2) of subdivision (a) of Section 1502 of the Health*
40 *and Safety Code.*

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

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

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

10 ~~(B)~~

11 (E) If the suspected or alleged abuse occurred in a state mental
12 hospital or a state developmental center, the report shall be made
13 to designated investigators of the State Department of State
14 Hospitals or the State Department of Developmental Services, or
15 to the local law enforcement agency.

16 ~~Except~~

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

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

24 ~~(C)~~

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

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

1 (B) ~~Nothing in this~~ *This* subdivision shall *not* be construed to
 2 modify or limit a clergy member’s duty to report known or
 3 suspected elder and dependent adult abuse ~~when~~ *if* he or she is
 4 acting in the capacity of a care custodian, health practitioner, or
 5 employee of an adult protective services agency.

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

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

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

22 (ii) The mandated reporter is not aware of any independent
 23 evidence that corroborates the statement that the abuse has
 24 occurred.

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

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

32 (B) This paragraph shall not be construed to impose upon
 33 mandated reporters a duty to investigate a known or suspected
 34 incident of abuse and shall not be construed to lessen or restrict
 35 any existing duty of mandated reporters.

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

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

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

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

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

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

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

25 (2) If the suspected or alleged abuse occurred in a long-term
26 care facility other than a state mental health hospital or a state
27 developmental center, the report may be made to the long-term
28 care ~~ombudsperson~~ *ombudsman* program. Except in an emergency,
29 the local ~~ombudsperson~~ *ombudsman* shall report any case of known
30 or suspected abuse to the State Department of Public Health and
31 any case of known or suspected criminal activity to the Bureau of
32 Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

33 (3) If the suspected or alleged abuse occurred in a state mental
34 health hospital or a state developmental center, the report may be
35 made to the designated investigator of the State Department of
36 State Hospitals or the State Department of Developmental Services
37 or to a local law enforcement agency ~~or to the local ombudsperson~~.
38 Except in an emergency, ~~the local ombudsperson and the local law~~
39 enforcement agency shall report any case of known or suspected

1 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse,
2 as soon as is practicable.

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

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

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

19 (e) A telephone report or Internet report, as authorized by
20 Section 15658, of a known or suspected instance of elder or
21 dependent adult abuse shall include, if known, the name of the
22 person making the report, the name and age of the elder or
23 dependent adult, the present location of the elder or dependent
24 adult, the names and addresses of family members or any other
25 adult responsible for the elder’s or dependent adult’s care, the
26 nature and extent of the elder’s or dependent adult’s condition, the
27 date of the incident, and any other information, including
28 information that led that person to suspect elder or dependent adult
29 abuse, as requested by the agency receiving the report.

30 (f) The reporting duties under this section are individual, and
31 no supervisor or administrator shall impede or inhibit the reporting
32 duties, and no person making the report shall be subject to any
33 sanction for making the report. However, internal procedures to
34 facilitate reporting, ensure confidentiality, and apprise supervisors
35 and administrators of reports may be established, provided they
36 are not inconsistent with this chapter.

37 (g) (1) Whenever this section requires a county adult protective
38 services agency to report to a law enforcement agency, the law
39 enforcement agency shall, immediately upon request, provide a

1 copy of its investigative report concerning the reported matter to
2 that county adult protective services agency.

3 (2) Whenever this section requires a law enforcement agency
4 to report to a county adult protective services agency, the county
5 adult protective services agency shall, immediately upon request,
6 provide to that law enforcement agency a copy of its investigative
7 report concerning the reported matter.

8 (3) The requirement to disclose investigative reports pursuant
9 to this subdivision shall not include the disclosure of social services
10 records or case files that are confidential, nor shall this subdivision
11 be construed to allow disclosure of any reports or records if the
12 disclosure would be prohibited by any other provision of state or
13 federal law.

14 (h) Failure to report, or impeding or inhibiting a report of,
15 physical abuse, as defined in Section 15610.63, abandonment,
16 abduction, isolation, financial abuse, or neglect of an elder or
17 dependent adult, in violation of this section, is a misdemeanor,
18 punishable by not more than six months in the county jail, by a
19 fine of not more than one thousand dollars (\$1,000), or by both
20 that fine and imprisonment. Any mandated reporter who willfully
21 fails to report, or impedes or inhibits a report of, physical abuse,
22 as defined in Section 15610.63, abandonment, abduction, isolation,
23 financial abuse, or neglect of an elder or dependent adult, in
24 violation of this section, ~~where~~ *if* that abuse results in death or
25 great bodily injury, shall be punished by not more than one year
26 in a county jail, by a fine of not more than five thousand dollars
27 (\$5,000), or by both that fine and imprisonment. If a mandated
28 reporter intentionally conceals his or her failure to report an
29 incident known by the mandated reporter to be abuse or severe
30 neglect under this section, the failure to report is a continuing
31 offense until a law enforcement agency specified in paragraph (1)
32 of subdivision (b) of Section 15630 discovers the offense.

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

35 *SEC. 5. Section 3.5 of this bill incorporates amendments to*
36 *Section 4427.5 of the Welfare and Institutions Code proposed by*
37 *both this bill and Senate Bill 1522. It shall only become operative*
38 *if (1) both bills are enacted and become effective on or before*
39 *January 1, 2013, (2) each bill amends Section 4427.5 of the*
40 *Welfare and Institutions Code, and (3) this bill is enacted after*

1 *Senate Bill 1522, in which case Section 4427.5 of the Welfare and*
2 *Institutions Code, as amended by Senate Bill 1522, shall remain*
3 *operative only until the operative date of this bill, at which time*
4 *Section 3.5 of this bill shall become operative, and Section 3 of*
5 *this bill shall not become operative.*

6 *SEC. 6. Section 4.5 of this bill incorporates amendments to*
7 *Section 15630 of the Welfare and Institutions Code proposed by*
8 *both this bill and Assembly Bill 40. It shall only become operative*
9 *if (1) both bills are enacted and become effective on or before*
10 *January 1, 2013, but this bill becomes operative first (2) each bill*
11 *amends Section 15630 of the Welfare and Institutions Code, and*
12 *(3) this bill is enacted after Assembly Bill 40, in which case Section*
13 *15630 of the Welfare and Institutions Code, as amended by Section*
14 *4 of this bill, shall remain operative only until January 1, 2013,*
15 *at which time Section 4.5 of this bill shall become operative, and*
16 *Section 4 of this bill shall not become operative.*

17 ~~SEC. 5.~~

18 *SEC. 7. No reimbursement is required by this act pursuant to*
19 *Section 6 of Article XIII B of the California Constitution for certain*
20 *costs that may be incurred by a local agency or school district*
21 *because, in that regard, this act creates a new crime or infraction,*
22 *eliminates a crime or infraction, or changes the penalty for a crime*
23 *or infraction, within the meaning of Section 17556 of the*
24 *Government Code, or changes the definition of a crime within the*
25 *meaning of Section 6 of Article XIII B of the California*
26 *Constitution.*

27 *However, if the Commission on State Mandates determines that*
28 *this act contains other costs mandated by the state, reimbursement*
29 *to local agencies and school districts for those costs shall be made*
30 *pursuant to Part 7 (commencing with Section 17500) of Division*
31 *4 of Title 2 of the Government Code.*

32 ~~SEC. 6.~~

33 *SEC. 8. This act is an urgency statute necessary for the*
34 *immediate preservation of the public peace, health, or safety within*
35 *the meaning of Article IV of the Constitution and shall go into*
36 *immediate effect. The facts constituting the necessity are:*

37 *In order to ensure that the applicable investigative structure*
38 *adequately protects residents of developmental centers and other*

- 1 vulnerable persons from harm at the earliest possible time, it is
- 2 necessary for this act to take effect immediately.

O