ASSEMBLY BILL No. 602

Introduced by Assembly Member Yamada

February 20, 2013

An act to add Section 13515.30 to the Penal Code, and to amend Section 15630 of the Welfare and Institutions Code, relating to disabled persons.

LEGISLATIVE COUNSEL’S DIGEST

AB 602, as introduced, Yamada. Mentally and developmentally disabled persons: reporting abuse: peace officer training.

Existing law requires the Commission on Peace Officer Standards and Training, in the Department of Justice, to establish and keep updated a continuing education classroom training course relating to law enforcement intervention with mentally disabled persons and requires the course to be developed in consultation with specified groups and entities. Existing law requires the commission to submit a report to the Legislature that contains specified information regarding this training.

This bill would require the commission to establish, by July 1, 2015, and keep updated a training course relating to law enforcement interaction with mentally disabled or developmentally disabled persons living within a state mental hospital or state developmental center, as specified. The training course would be required for law enforcement personnel in law enforcement agencies with jurisdiction over state mental health hospitals and state developmental centers, as part of the agency’s officer training program. This bill would require the commission to submit a report to the Legislature, by October 1, 2017, that contains specified information regarding this training. By creating...
new duties for local officials, this bill would impose a state-mandated local program.

Existing law requires specified people, known as mandated reporters, to report cases of elder or dependent adult abuse, as defined. Existing law requires a report to be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local enforcement agency if the suspected or alleged abuse occurred in a state mental hospital or state developmental center. Existing law also requires 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. Failure to make a report as required by existing law is a misdemeanor.

This bill would instead require a report to be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, and also to the local enforcement agency if the suspected or alleged abuse or neglect occurred in a state mental hospital or state developmental center and resulted in any specified incidents, including a death or a sexual assault. This bill would also require mandated reporters in the State Department of State Hospitals to immediately report suspected abuse to the Office of Protective Services or to the local law enforcement agency. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

This bill would also require a local law enforcement agency to coordinate efforts with the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services to provide a response to investigate reports received pursuant to specified provisions. By creating new duties for local officials, this bill would impose a state-mandated local program.

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

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

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

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

SECTION 1. Section 13515.30 is added to the Penal Code, to read:

13515.30. (a) By July 1, 2015, the Commission on Peace Officer Standards and Training shall establish and keep updated a continuing education classroom training course relating to law enforcement interaction with mentally disabled and developmentally disabled persons living within a state mental hospital or state developmental center. The training course shall be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family advocate groups. In developing the course, the commission shall also examine existing courses certified by the commission that relate to mentally disabled and developmentally disabled persons. The commission shall make the course available to all law enforcement agencies in California, and the course shall be required for law enforcement personnel serving in law enforcement agencies with jurisdiction over state mental hospitals and state developmental centers, as part of the agency’s officer training program.

(b) The course described in subdivision (a) shall consist of classroom instruction and shall utilize interactive training methods to ensure that the training is as realistic as possible. The course shall include, at a minimum, core instruction in all of the following:

(1) The prevalence, cause, and nature of mental illnesses and developmental disabilities.

(2) The unique characteristics, barriers, and challenges of individuals who may be a victim of abuse or exploitation living within a state mental hospital or state developmental center.

(3) How to accommodate, interview, and converse with individuals who may require assistive devices in order to express themselves.

(4) Capacity and consent of individuals with cognitive and intellectual barriers.

(5) Conflict resolution and deescalation techniques for potentially dangerous situations involving mentally disabled or developmentally disabled persons.
(6) Appropriate language usage when interacting with mentally
disabled or developmentally disabled persons.

(7) Community and state resources and advocacy support and
services available to serve mentally disabled or developmentally
disabled persons, and how these resources can be best utilized by
law enforcement to benefit the mentally disabled or
developmentally disabled community.

(8) The fact that a crime committed in whole or in part because
of an actual or perceived disability of the victim is a hate crime
punishable under Title 11.6 (commencing with Section 422.55)
of Part 1.

(9) Information on the state mental hospital system and the state
developmental center system.

(10) Techniques in conducting forensic investigations within
institutional settings where jurisdiction may be shared.

(11) Examples of abuse and exploitation perpetrated by
caregivers, staff, contractors, or administrators of state mental
hospitals and state developmental centers, and how to conduct
investigations in instances where a perpetrator may also be a
caregiver or provider of therapeutic or other services.

(c) The commission shall submit a report to the Legislature by
October 1, 2017, that shall include all of the following:

(1) A description of the process by which the course was
established, including a list of the agencies and groups that were
consulted.

(2) Information on the number of law enforcement agencies
that utilized, and the number of officers that attended, the course
or other courses certified by the commission relating to mentally
disabled or developmentally disabled persons living within a state
mental hospital or state developmental center from July 1, 2015
to July 1, 2017, inclusive.

(d) (1) The requirement for submitting a report imposed under
subdivision (c) is inoperative on October 1, 2021, pursuant to
Section 10231.5 of the Government Code.

(2) A report to be submitted pursuant to subdivision (c) shall
be submitted in compliance with Section 9795 of the Government
Code.

(e) It is the intent of the Legislature to reevaluate, on the basis
of its review of the report required in subdivision (c), the extent
to which law enforcement officers are receiving adequate training
in how to interact with mentally disabled or developmentally
disabled persons living within a state mental hospital or state
developmental center.

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

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

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

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

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

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

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

(iv) When applicable, reports made pursuant to clauses (i) and (ii) shall be deemed to satisfy the reporting requirements of the federal Elder Justice Act of 2009, as set out in Subtitle H of the federal Patient Protection and Affordable Care Act (Public Law 111-148), Section 1418.91 of the Health and Safety Code, and Section 72541 of Title 22 of California Code of Regulations. When a local law enforcement agency receives an initial report of suspected abuse in a long-term care facility pursuant to this subparagraph, the local law enforcement agency may coordinate efforts with the local ombudsman to provide the most immediate and appropriate response warranted to investigate the mandated report. The local ombudsman and local law enforcement agencies may collaborate to develop protocols to implement this subparagraph.

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

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

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

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

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

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

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

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

(E) (i) If the suspected or alleged abuse or neglect occurred in a state mental hospital or a state developmental center, and the suspected or alleged abuse or neglect resulted in any of the following incidents, a report shall be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or and also to the local law enforcement agency:

(I) A death.

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

(III) An assault with a deadly weapon, as described in Section 245 of the Penal Code, by a nonresident of the state mental hospital or state developmental center.
(IV) An assault with force likely to produce great bodily injury, as described in Section 245 of the Penal Code.

(V) An injury to the genitals when the cause of the injury is undetermined.

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

(ii) All other reports of suspected or alleged abuse or neglect that occurred in a state mental hospital or a state developmental center shall be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency.

(iii) When a local law enforcement agency receives an initial report of suspected or alleged abuse or neglect in a state mental hospital or a state developmental center pursuant to clause (i), the local law enforcement agency shall coordinate efforts with the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services to provide the most immediate and appropriate response warranted to investigate the mandated report. The designated investigators of the State Department of State Hospitals or the State Department of Developmental Services and local law enforcement agencies may collaborate to develop protocols to implement this clause.

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

(v) Mandated reporters of the State Department of State Hospitals or the State Department of Developmental Services shall immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, report suspected abuse to the Office of Protective Services or to the local law enforcement agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be 
made to the designated investigator of the State Department of
State Hospitals or the State Department of Developmental Services
or to a local law enforcement agency. Except in an emergency,
the local law enforcement agency shall report any case of known
or suspected criminal activity to the Bureau of Medi-Cal Fraud
and Elder Abuse, as soon as is practicable.
(4) If the suspected or alleged abuse occurred in a place other
than a place described in paragraph (2) or (3), the report may be
made to the county adult protective services agency.
(5) If the conduct involves criminal activity not covered in
subdivision (b), it may be immediately reported to the appropriate
law enforcement agency.
(d) If two or more mandated reporters are present and jointly
have knowledge or reasonably suspect that types of abuse of an
elder or a dependent adult for which a report is or is not mandated
have occurred, and there is agreement among them, the telephone
report or Internet report, as authorized by Section 15658, may be
made by a member of the team selected by mutual agreement, and
a single report may be made and signed by the selected member
of the reporting team. Any member who has knowledge that the
member designated to report has failed to do so shall thereafter
make the report.
(e) A telephone report or Internet report, as authorized by
Section 15658, of a known or suspected instance of elder or
dependent adult abuse shall include, if known, the name of the
person making the report, the name and age of the elder or
dependent adult, the present location of the elder or dependent
adult, the names and addresses of family members or any other
adult responsible for the elder’s or dependent adult’s care, the
nature and extent of the elder’s or dependent adult’s condition, the
date of the incident, and any other information, including
information that led that person to suspect elder or dependent adult
abuse, as requested by the agency receiving the report.
(f) The reporting duties under this section are individual, and
no supervisor or administrator shall impede or inhibit the reporting
duties, and no person making the report shall be subject to any
sanction for making the report. However, internal procedures to
facilitate reporting, ensure confidentiality, and apprise supervisors
and administrators of reports may be established, provided they
are not inconsistent with this chapter.
Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

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

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

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

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district.
because, in that regard, this act creates a new crime or infraction,
eliminates a crime or infraction, or changes the penalty for a crime
or infraction, within the meaning of Section 17556 of the
Government Code, or changes the definition of a crime within the
meaning of Section 6 of Article XIII B of the California
Constitution.
However, if the Commission on State Mandates determines that
this act contains other costs mandated by the state, reimbursement
to local agencies and school districts for those costs shall be made
pursuant to Part 7 (commencing with Section 17500) of Division
4 of Title 2 of the Government Code.