

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

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

3 13515.30. (a) By July 1, 2015, the Commission on Peace
4 Officer Standards and Training shall establish and keep updated
5 a continuing education classroom training course relating to law
6 enforcement interaction with mentally disabled and
7 developmentally disabled persons living within a state mental
8 hospital or state developmental center. The training course shall
9 be developed by the commission in consultation with appropriate
10 community, local, and state organizations and agencies that have
11 expertise in the area of mental illness and developmental disability,
12 and with appropriate consumer and family advocate groups. In
13 developing the course, the commission shall also examine existing
14 courses certified by the commission that relate to mentally disabled
15 and developmentally disabled persons. The commission shall make
16 the course available to all law enforcement agencies in California,
17 and the course shall be required for law enforcement personnel
18 serving in law enforcement agencies with jurisdiction over state
19 mental hospitals and state developmental centers, as part of the
20 agency's officer training program.

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

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

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

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

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

35 (5) Conflict resolution and deescalation techniques for
36 potentially dangerous situations involving mentally disabled or
37 developmentally disabled persons.

1 (6) Appropriate language usage when interacting with mentally
2 disabled or developmentally disabled persons.

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

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

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

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

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

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

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

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

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

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

38 (e) It is the intent of the Legislature to reevaluate, on the basis
39 of its review of the report required in subdivision (c), the extent
40 to which law enforcement officers are receiving adequate training

1 in how to interact with mentally disabled or developmentally
2 disabled persons living within a state mental hospital or state
3 developmental center.

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

6 15630. (a) Any person who has assumed full or intermittent
7 responsibility for the care or custody of an elder or dependent
8 adult, whether or not he or she receives compensation, including
9 administrators, supervisors, and any licensed staff of a public or
10 private facility that provides care or services for elder or dependent
11 adults, or any elder or dependent adult care custodian, health
12 practitioner, clergy member, or employee of a county adult
13 protective services agency or a local law enforcement agency, is
14 a mandated reporter.

15 (b) (1) Any mandated reporter who, in his or her professional
16 capacity, or within the scope of his or her employment, has
17 observed or has knowledge of an incident that reasonably appears
18 to be physical abuse, as defined in Section 15610.63, abandonment,
19 abduction, isolation, financial abuse, or neglect, or is told by an
20 elder or dependent adult that he or she has experienced behavior,
21 including an act or omission, constituting physical abuse, as defined
22 in Section 15610.63, abandonment, abduction, isolation, financial
23 abuse, or neglect, or reasonably suspects that abuse, shall report
24 the known or suspected instance of abuse by telephone or through
25 a confidential Internet reporting tool, as authorized by Section
26 15658, immediately or as soon as practicably possible. If reported
27 by telephone, a written report shall be sent, or an Internet report
28 shall be made through the confidential Internet reporting tool
29 established in Section 15658, within two working ~~days~~: *days*.

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

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

1 reporter observing, obtaining knowledge of, or suspecting the
 2 physical abuse.

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

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

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

32 (B) Notwithstanding the rulemaking provisions of Chapter 3.5
 33 (commencing with Section 11340) of Part 1 of Division 3 of Title
 34 2 of the Government Code, or any other law, the department may
 35 implement subparagraph (A), in whole or in part, by means of
 36 all-county letters, provider bulletins, or other similar instructions
 37 without taking regulatory action.

38 (C) If the suspected or alleged abuse is abuse other than physical
 39 abuse, and the abuse occurred in a long-term care facility, except
 40 a state mental health hospital or a state developmental center, a

1 telephone report and a written report shall be made to the local
2 ombudsman or the local law enforcement agency.

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

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

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

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

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

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

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

35 (I) *A death.*

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

37 (III) *An assault with a deadly weapon, as described in Section*
38 *245 of the Penal Code, by a nonresident of the state mental hospital*
39 *or state developmental center.*

1 (IV) An assault with force likely to produce great bodily injury,
2 as described in Section 245 of the Penal Code.

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

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

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

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

23 (i)

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

27 (ii)

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

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

37 (2) (A) A mandated reporter who is a clergy member who
38 acquires knowledge or reasonable suspicion of elder or dependent
39 adult abuse during a penitential communication is not subject to
40 paragraph (1). For purposes of this subdivision, “penitential

1 communication” means a communication that is intended to be in
2 confidence, including, but not limited to, a sacramental confession
3 made to a clergy member who, in the course of the discipline or
4 practice of his or her church, denomination, or organization is
5 authorized or accustomed to hear those communications and under
6 the discipline tenets, customs, or practices of his or her church,
7 denomination, or organization, has a duty to keep those
8 communications secret.

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

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

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

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

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

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

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

39 (B) This paragraph shall not be construed to impose upon
40 mandated reporters a duty to investigate a known or suspected

1 incident of abuse and shall not be construed to lessen or restrict
 2 any existing duty of mandated reporters.

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

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

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

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

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

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

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

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

39 (3) If the suspected or alleged abuse occurred in a state mental
 40 health hospital or a state developmental center, the report may be

1 made to the designated investigator of the State Department of
2 State Hospitals or the State Department of Developmental Services
3 or to a local law enforcement agency. Except in an emergency,
4 the local law enforcement agency shall report any case of known
5 or suspected criminal activity to the Bureau of Medi-Cal Fraud
6 and Elder Abuse, as soon as is practicable.

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

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

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

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

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

1 (g) (1) Whenever this section requires a county adult protective
2 services agency to report to a law enforcement agency, the law
3 enforcement agency shall, immediately upon request, provide a
4 copy of its investigative report concerning the reported matter to
5 that county adult protective services agency.

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

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

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

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

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution for certain
40 costs that may be incurred by a local agency or school district

1 because, in that regard, this act creates a new crime or infraction,
2 eliminates a crime or infraction, or changes the penalty for a crime
3 or infraction, within the meaning of Section 17556 of the
4 Government Code, or changes the definition of a crime within the
5 meaning of Section 6 of Article XIII B of the California
6 Constitution.

7 However, if the Commission on State Mandates determines that
8 this act contains other costs mandated by the state, reimbursement
9 to local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.

O