

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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, as specified, 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~~ *may* consist of
22 *video-based or classroom instruction and shall utilize interactive*
23 ~~training methods to ensure that the training is as realistic as~~
24 ~~possible.~~ *instruction.* The course shall include, at a minimum, core
25 instruction in all of the following:

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

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

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

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

1 (5) Conflict resolution and deescalation techniques for
2 potentially dangerous situations involving mentally disabled or
3 developmentally disabled persons.

4 (6) Appropriate language usage when interacting with mentally
5 disabled or developmentally disabled persons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) If the suspected abuse results in serious bodily injury, a
38 telephone report shall be made to the local law enforcement agency
39 immediately, but also no later than within two hours of the
40 mandated reporter observing, obtaining knowledge of, or

1 suspecting the physical abuse, and a written report shall be made
2 to the local ombudsman, the corresponding licensing agency, and
3 the local law enforcement agency within two hours of the mandated
4 reporter observing, obtaining knowledge of, or suspecting the
5 physical abuse.

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

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

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

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

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

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

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

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

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

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

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

31 (E) (i) If the suspected or alleged abuse or neglect occurred in
32 a state mental hospital or a state developmental center, and the
33 suspected or alleged abuse or neglect resulted in any of the
34 following incidents, a report shall be made immediately, but no
35 later than within two hours of the mandated reporter observing,
36 obtaining knowledge of, or suspecting abuse, to designated
37 investigators of the State Department of State Hospitals or the
38 State Department of Developmental Services, and also to the local
39 law enforcement agency:

40 (I) A death.

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

2 (III) An assault with a deadly weapon, as described in Section
3 245 of the Penal Code, by a nonresident of the state mental hospital
4 or state developmental center.

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

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

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

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

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

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

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

36 (F) If the abuse has occurred in any place other than a long-term
37 care facility, a state mental hospital, or a state developmental
38 center, the report shall be made to the adult protective services
39 agency or the local law enforcement agency.

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

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

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

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

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

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

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

39 (iv) In the exercise of clinical judgment, the physician and
40 surgeon, the registered nurse, or the psychotherapist, as defined

1 in Section 1010 of the Evidence Code, reasonably believes that
2 the abuse did not occur.

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

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

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

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

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

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

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

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

35 (2) If the suspected or alleged abuse occurred in a long-term
36 care facility other than a state mental health hospital or a state
37 developmental center, the report may be made to the long-term
38 care ombudsman program. Except in an emergency, the local
39 ombudsman shall report any case of known or suspected abuse to
40 the State Department of Public Health and any case of known or

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

3 (3) If the suspected or alleged abuse occurred in a state mental
4 health hospital or a state developmental center, the report may be
5 made to the designated investigator of the State Department of
6 State Hospitals or the State Department of Developmental Services
7 or to a local law enforcement agency. Except in an emergency,
8 the local law enforcement agency shall report any case of known
9 or suspected criminal activity to the Bureau of Medi-Cal Fraud
10 and Elder Abuse, as soon as is practicable.

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

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

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

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

38 (f) The reporting duties under this section are individual, and
39 no supervisor or administrator shall impede or inhibit the reporting
40 duties, and no person making the report shall be subject to any

1 sanction for making the report. However, internal procedures to
2 facilitate reporting, ensure confidentiality, and apprise supervisors
3 and administrators of reports may be established, provided they
4 are not inconsistent with this chapter.

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

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

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

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

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

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution for certain
5 costs that may be incurred by a local agency or school district
6 because, in that regard, this act creates a new crime or infraction,
7 eliminates a crime or infraction, or changes the penalty for a crime
8 or infraction, within the meaning of Section 17556 of the
9 Government Code, or changes the definition of a crime within the
10 meaning of Section 6 of Article XIII B of the California
11 Constitution.

12 However, if the Commission on State Mandates determines that
13 this act contains other costs mandated by the state, reimbursement
14 to local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.