

## ***AB 40 (Yamada) – Elder abuse: reporting***

***Introduced December 6, 2010***

The Elder Abuse and Dependent Adult Civil Protection Act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Existing law requires a mandated reporter to report the abuse to the local ombudsperson **or** the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsperson and the local law enforcement agency. This bill would also make various technical, nonsubstantive changes.

**ASSEMBLY BILL**

**No. 40**

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**Introduced by Assembly Member Yamada**

December 6, 2010

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An act to amend Section 15630 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as introduced, Yamada. Elder abuse: reporting.

The Elder Abuse and Dependent Adult Civil Protection Act establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires certain persons, called mandated reporters, to report known or suspected instances of elder or dependent adult abuse. The act requires a mandated reporter to report the abuse to the local ombudsperson or the local law enforcement agency if the abuse occurs in a long-term care facility. Failure to report physical abuse and financial abuse of an elder or dependent adult under the act is a misdemeanor.

This bill would, instead, require the mandated reporter to report the abuse to both the local ombudsperson and the local law enforcement agency. This bill would also make various technical, nonsubstantive changes.

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of local law enforcement agencies, 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 15630 of the Welfare and Institutions  
2 Code is amended to read:

3 15630. (a) Any person who has assumed full or intermittent  
4 responsibility for the care or custody of an elder or dependent  
5 adult, whether or not he or she receives compensation, including  
6 administrators, supervisors, and any licensed staff of a public or  
7 private facility that provides care or services for elder or dependent  
8 adults, or any elder or dependent adult care custodian, health  
9 practitioner, clergy member, or employee of a county adult  
10 protective services agency or a local law enforcement agency, is  
11 a mandated reporter.

12 (b) (1) Any mandated reporter who, in his or her professional  
13 capacity, or within the scope of his or her employment, has  
14 observed or has knowledge of an incident that reasonably appears  
15 to be physical abuse, as defined in Section 15610.63 of the Welfare  
16 and Institutions Code, abandonment, abduction, isolation, financial  
17 abuse, or neglect, or is told by an elder or dependent adult that he  
18 or she has experienced behavior, including an act or omission,  
19 constituting physical abuse, as defined in Section 15610.63 of the  
20 Welfare and Institutions Code, abandonment, abduction, isolation,  
21 financial abuse, or neglect, or reasonably suspects that abuse, shall  
22 report the known or suspected instance of abuse by telephone  
23 immediately or as soon as practicably possible, and by written  
24 report sent within two working days, as follows:

25 (A) If the abuse has occurred in a long-term care facility, except  
26 a state mental health hospital or a state developmental center, the  
27 report shall be made to *both* the local ombudsperson ~~or~~ and the  
28 local law enforcement agency.

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

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

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

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

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

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

24 (B) If the suspected or alleged abuse occurred in a state mental  
25 hospital or a state developmental center, the report shall be made  
26 to designated investigators of the State Department of Mental  
27 Health or the State Department of Developmental Services, or to  
28 the local law enforcement agency.

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

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

35 (2) (A) A mandated reporter who is a clergy member who  
36 acquires knowledge or reasonable suspicion of elder or dependent  
37 adult abuse during a penitential communication is not subject to  
38 paragraph (1). For purposes of this subdivision, "penitential  
39 communication" means a communication that is intended to be in  
40 confidence, including, but not limited to, a sacramental confession

1 made to a clergy member who, in the course of the discipline or  
2 practice of his or her church, denomination, or organization is  
3 authorized or accustomed to hear those communications and under  
4 the discipline tenets, customs, or practices of his or her church,  
5 denomination, or organization, has a duty to keep those  
6 communications secret.

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

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

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

24 (i) The mandated reporter has been told by an elder or dependent  
25 adult that he or she has experienced behavior constituting physical  
26 abuse, as defined in Section 15610.63 ~~of the Welfare and~~  
27 ~~Institutions Code~~, abandonment, abduction, isolation, financial  
28 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 ~~where~~ *if* all of the following  
6 conditions 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 ombudsperson, have  
22 access to plans of care and have the training and experience  
23 necessary to determine whether the conditions specified in this  
24 section have 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 ombudsperson program. Except in an emergency, the local  
35 ombudsperson shall report any case of known or suspected abuse  
36 to the State Department of Public Health and any case of known  
37 or suspected criminal activity to the Bureau of Medi-Cal Fraud  
38 and 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 Mental Health or the State Department of Developmental Services  
3 or to a local law enforcement agency or to the local ombudsperson.  
4 Except in an emergency, the local ombudsperson and the local law  
5 enforcement agency shall report any case of known or suspected  
6 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse,  
7 as soon as is practicable.

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

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

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

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

33 (f) The reporting duties under this section are individual, and  
34 no supervisor or administrator shall impede or inhibit the reporting  
35 duties, and no person making the report shall be subject to any  
36 sanction for making the report. However, internal procedures to  
37 facilitate reporting, ensure confidentiality, and apprise supervisors  
38 and administrators of reports may be established, provided they  
39 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 of the Welfare and  
19 Institutions Code, abandonment, abduction, isolation, financial  
20 abuse, or neglect of an elder or dependent adult, in violation of  
21 this section, is a misdemeanor, punishable by not more than six  
22 months in the county jail, by a fine of not more than one thousand  
23 dollars (\$1,000), or by both that fine and imprisonment. Any  
24 mandated reporter who willfully fails to report, or impedes or  
25 inhibits a report of, physical abuse, as defined in Section 15610.63  
26 of the Welfare and Institutions Code, abandonment, abduction,  
27 isolation, financial abuse, or neglect of an elder or dependent adult,  
28 in violation of this section, ~~where if~~ that abuse results in death or  
29 great bodily injury, shall be punished by not more than one year  
30 in a county jail, by a fine of not more than five thousand dollars  
31 (\$5,000), or by both that fine and imprisonment. If a mandated  
32 reporter intentionally conceals his or her failure to report an  
33 incident known by the mandated reporter to be abuse or severe  
34 neglect under this section, the failure to report is a continuing  
35 offense until a law enforcement agency specified in paragraph (1)  
36 of subdivision (b) of Section 15630 of the Welfare and Institutions  
37 Code discovers the offense.

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



1 SEC. 2. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution for certain  
3 costs that may be incurred by a local agency or school district  
4 because, in that regard, this act creates a new crime or infraction,  
5 eliminates a crime or infraction, or changes the penalty for a crime  
6 or infraction, within the meaning of Section 17556 of the  
7 Government Code, or changes the definition of a crime within the  
8 meaning of Section 6 of Article XIII B of the California  
9 Constitution.

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