

SB 718 (Vargas and Pérez) – Elder and Dependent Adult Abuse Reporting

Introduced February 18, 2011, Amended June 27, 2011

Existing law requires specified people, known as mandated reporters, to report cases of elder *or dependent adult* abuse, as defined. Existing law requires mandated reporters, after reporting the abuse by telephone, to send written reports to specified entities containing prescribed information.

This bill would authorize the required reports to be submitted through a confidential Internet reporting tool, if the county or long-term care ombudsman implements such a system, and would require a county or long-term care ombudsman program that chooses to implement this system to report specified information to the appropriate *specified* policy committees of the Legislature one year after full implementation.

AMENDED IN ASSEMBLY JUNE 27, 2011

AMENDED IN SENATE MAY 24, 2011

AMENDED IN SENATE MAY 2, 2011

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 718

Introduced by Senator Vargas

(Coauthor: Assembly Member V. Manuel Pérez)

February 18, 2011

An act to amend Sections 15630, 15630.1, and 15658 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 718, as amended, Vargas. Elder and dependent adult abuse: mandated reporting.

Existing law requires specified people, known as mandated reporters, to report cases of elder *or dependent adult* abuse, as defined. Existing law requires mandated reporters, after reporting the abuse by telephone, to send written reports to specified entities containing prescribed information.

This bill would authorize the required reports to be submitted through a confidential Internet reporting tool, if the county or long-term care ombudsman implements such a system, and would require a county or long-term care ombudsman program that chooses to implement this system to report specified information to ~~the appropriate~~ *specified* policy committees of the Legislature one year after full implementation.

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

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

SECTION 1. 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 of the Welfare and Institutions Code, 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 of the Welfare and Institutions Code, 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, as follows:

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

The local ombudsperson 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:

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

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

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

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

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

19 (B) If the suspected or alleged abuse occurred in a state mental
20 hospital or a state developmental center, the report shall be made
21 to designated investigators of the State Department of Mental
22 Health or the State Department of Developmental Services, or to
23 the local law enforcement agency.

24 Except in an emergency, the local law enforcement agency shall,
25 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 (C) If the abuse has occurred any place other than one described
28 in subparagraph (A), the report shall be made to the adult protective
29 services agency or the local law enforcement agency.

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

1 denomination, or organization, has a duty to keep those
2 communications secret.

3 (B) Nothing in this subdivision shall be construed to modify or
4 limit a clergy member's duty to report known or suspected elder
5 and dependent adult abuse when he or she is acting in the capacity
6 of a care custodian, health practitioner, or employee of an adult
7 protective services agency.

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

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

20 (i) The mandated reporter has been told by an elder or dependent
21 adult that he or she has experienced behavior constituting physical
22 abuse, as defined in Section 15610.63 ~~of the Welfare and~~
23 ~~Institutions Code~~, abandonment, abduction, isolation, financial
24 abuse, or neglect.

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

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

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

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

39 (4) (A) In a long-term care facility, a mandated reporter shall
40 not be required to report as a suspected incident of abuse, as defined

1 in Section 15610.07, an incident where all of the following
2 conditions exist:

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

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

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

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

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

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

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

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

1 enforcement agency shall report any case of known or suspected
2 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse,
3 as soon as is practicable.

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

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

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

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

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

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

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

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

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

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

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

37 SEC. 2. Section 15630.1 of the Welfare and Institutions Code
38 is amended to read:

1 15630.1. (a) As used in this section, “mandated reporter of
2 suspected financial abuse of an elder or dependent adult” means
3 all officers and employees of financial institutions.

4 (b) As used in this section, the term “financial institution” means
5 any of the following:

6 (1) A depository institution, as defined in Section 3(c) of the
7 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

8 (2) An institution-affiliated party, as defined in Section 3(u) of
9 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

10 (3) A federal credit union or state credit union, as defined in
11 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752),
12 including, but not limited to, an institution-affiliated party of a
13 credit union, as defined in Section 206(r) of the Federal Credit
14 Union Act (12 U.S.C. Sec. 1786(r)).

15 (c) As used in this section, “financial abuse” has the same
16 meaning as in Section 15610.30.

17 (d) (1) Any mandated reporter of suspected financial abuse of
18 an elder or dependent adult who has direct contact with the elder
19 or dependent adult or who reviews or approves the elder or
20 dependent adult’s financial documents, records, or transactions,
21 in connection with providing financial services with respect to an
22 elder or dependent adult, and who, within the scope of his or her
23 employment or professional practice, has observed or has
24 knowledge of an incident, that is directly related to the transaction
25 or matter that is within that scope of employment or professional
26 practice, that reasonably appears to be financial abuse, or who
27 reasonably suspects that abuse, based solely on the information
28 before him or her at the time of reviewing or approving the
29 document, record, or transaction in the case of mandated reporters
30 who do not have direct contact with the elder or dependent adult,
31 shall report the known or suspected instance of financial abuse by
32 telephone or through a confidential Internet reporting tool, as
33 authorized pursuant to Section 15658, immediately, or as soon as
34 practicably possible. If reported by telephone, a written report shall
35 be sent, or an Internet report shall be made through the confidential
36 Internet reporting tool established in Section 15658, within two
37 working days to the local adult protective services agency or the
38 local law enforcement agency.

39 (2) When two or more mandated reporters jointly have
40 knowledge or reasonably suspect that financial abuse of an elder

1 or a dependent adult for which the report is mandated has occurred,
2 and when there is an agreement among them, the telephone report
3 or Internet report, as authorized by Section 15658, may be made
4 by a member of the reporting team who is selected by mutual
5 agreement. A single report may be made and signed by the selected
6 member of the reporting team. Any member of the team who has
7 knowledge that the member designated to report has failed to do
8 so shall thereafter make that report.

9 (3) If the mandated reporter knows that the elder or dependent
10 adult resides in a long-term care facility, as defined in Section
11 15610.47, the report shall be made to the local ombudsman or local
12 law enforcement agency.

13 (e) An allegation by the elder or dependent adult, or any other
14 person, that financial abuse has occurred is not sufficient to trigger
15 the reporting requirement under this section if both of the following
16 conditions are met:

17 (1) The mandated reporter of suspected financial abuse of an
18 elder or dependent adult is aware of no other corroborating or
19 independent evidence of the alleged financial abuse of an elder or
20 dependent adult. The mandated reporter of suspected financial
21 abuse of an elder or dependent adult is not required to investigate
22 any accusations.

23 (2) In the exercise of his or her professional judgment, the
24 mandated reporter of suspected financial abuse of an elder or
25 dependent adult reasonably believes that financial abuse of an
26 elder or dependent adult did not occur.

27 (f) Failure to report financial abuse under this section shall be
28 subject to a civil penalty not exceeding one thousand dollars
29 (\$1,000) or if the failure to report is willful, a civil penalty not
30 exceeding five thousand dollars (\$5,000), which shall be paid by
31 the financial institution that is the employer of the mandated
32 reporter to the party bringing the action. Subdivision (h) of Section
33 15630 shall not apply to violations of this section.

34 (g) (1) The civil penalty provided for in subdivision (f) shall
35 be recovered only in a civil action brought against the financial
36 institution by the Attorney General, district attorney, or county
37 counsel. No action shall be brought under this section by any
38 person other than the Attorney General, district attorney, or county
39 counsel. Multiple actions for the civil penalty may not be brought
40 for the same violation.

1 (2) Nothing in the Financial Elder Abuse Reporting Act of 2005
2 shall be construed to limit, expand, or otherwise modify any civil
3 liability or remedy that may exist under this or any other law.

4 (h) As used in this section, “suspected financial abuse of an
5 elder or dependent adult” occurs when a person who is required
6 to report under subdivision (a) observes or has knowledge of
7 behavior or unusual circumstances or transactions, or a pattern of
8 behavior or unusual circumstances or transactions, that would lead
9 an individual with like training or experience, based on the same
10 facts, to form a reasonable belief that an elder or dependent adult
11 is the victim of financial abuse as defined in Section 15610.30.

12 (i) Reports of suspected financial abuse of an elder or dependent
13 adult made by an employee or officer of a financial institution
14 pursuant to this section are covered under subdivision (b) of Section
15 47 of the Civil Code.

16 (j) This section shall remain in effect only until January 1, 2013,
17 and as of that date is repealed, unless a later enacted statute, that
18 is enacted before January 1, 2013, deletes or extends that date.

19 SEC. 3. Section 15658 of the Welfare and Institutions Code is
20 amended to read:

21 15658. (a) A written abuse report required by this chapter,
22 shall be submitted in one of the following ways:

23 (1) On a form adopted by the State Department of Social
24 Services after consultation with representatives of the various law
25 enforcement agencies, the California Department of Aging, the
26 State Department of Developmental Services, the State Department
27 of Mental Health, the bureau, professional medical and nursing
28 agencies, hospital associations, and county welfare departments.
29 These reporting forms shall be distributed by the county adult
30 protective services agencies and the long-term care ombudsman
31 programs. This reporting form may also be used for documenting
32 the telephone report of a known or suspected instance of abuse of
33 an elder or dependent adult by the county adult protective services
34 agency, local ombudsman program, and local law enforcement
35 agencies.

36 (2) Through a confidential Internet reporting tool, if the county
37 or long-term care ombudsman program chooses to implement such
38 a system. This Internet reporting tool shall be developed and
39 implemented in a manner that ensures the confidentiality and
40 security of all information contained in the reports, pursuant to the

1 confidentiality standards set forth in Sections 10850, 15633, and
2 15633.5.

3 (A) A county or long-term care ombudsman program that
4 chooses to implement this system shall report to the ~~appropriate~~
5 ~~policy committees of the Legislature~~ *Assembly Committee on Aging*
6 *and Long-Term Care, the Assembly Committee on Human Services,*
7 *the Senate Committee on Human Services, the Assembly Committee*
8 *on Public Safety, and the Senate Committee on Public Safety* one
9 year after full implementation. The report shall include changes
10 in the number of mandated reporters reporting through the
11 confidential Internet reporting tool, changes in the number of
12 abandoned calls, and any other quantitative or qualitative data that
13 indicates the success, or lack thereof, in employing a confidential
14 Internet reporting tool to better protect the safety and financial
15 security of elder and dependent adults.

16 (B) Information sent and received through the confidential
17 Internet reporting tool shall be used only for its intended purpose
18 and shall be subject to the same confidentiality and privacy
19 requirements that govern nonelectronic transmission of the same
20 information, and that are set forth in Sections 10850, 15633, and
21 15633.5.

22 (b) The form required by this section and the confidential
23 Internet reporting tool, if implemented, shall contain the following
24 items:

25 (1) The name, address, telephone number, and occupation of
26 the person reporting.

27 (2) The name and address of the victim.

28 (3) The date, time, and place of the incident.

29 (4) Other details, including the reporter's observations and
30 beliefs concerning the incident.

31 (5) Any statement relating to the incident made by the victim.

32 (6) The name of any individuals believed to have knowledge
33 of the incident.

34 (7) The name of the individuals believed to be responsible for
35 the incident and their connection to the victim.

36 (c) (1) Each county adult protective services agency shall report
37 to the State Department of Social Services monthly on the reports
38 received pursuant to this chapter. The reports shall be made on
39 forms adopted by the department. The information reported shall
40 include, but shall not be limited to, the number of incidents of

1 abuse, the number of persons abused, the type of abuse sustained,
2 and the actions taken on the reports. For purposes of these reports,
3 sexual abuse shall be reported separately from physical abuse.

4 (2) The county's report to the department shall not include
5 reports it receives from the long-term care ombudsman program
6 pursuant to subdivision (d).

7 (3) The department shall refer to the bureau monthly data
8 summaries of the reports of elder and dependent adult abuse,
9 neglect, abandonment, isolation, financial abuse, and other abuse
10 it receives from county adult protective services agencies.

11 (d) Each long-term care ombudsman program shall report to
12 the Office of the State Long-Term Care Ombudsman of the
13 California Department of Aging monthly on the reports it receives
14 pursuant to this chapter and shall send a copy to the county adult
15 protective services agency. The Office of the State Long-Term
16 Care Ombudsman shall submit a summarized quarterly report to
17 the department based on the monthly reports submitted by local
18 long-term care ombudsman programs. The reports shall be on
19 forms adopted by the department and the Office of the State
20 Long-Term Care Ombudsman. The information reported shall
21 include, but shall not be limited to, the number of incidents of
22 abuse, the numbers of persons abused, the type of abuse, and the
23 actions taken on the reports. For purposes of these reports, sexual
24 abuse shall be reported separately from physical abuse.