

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

***Introduced December 6, 2010, Amended March 21, 2012***

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.

The Long Term Care Ombudsman (LTCO) program is administered through the California Department of Aging (CDA) and 35 local programs contracted through the network of local area agencies on aging (AAA). According to the CDA website, the primary responsibility of the program is to investigate and endeavor to resolve complaints made by, or on behalf of, individual residents in long-term care facilities. The goal of the program is to advocate for the rights of all residents of long-term care facilities.

According to the author, the LTCO program is operating under conflicting mandates. Under the Older American's Act (OAA) mandate, LTCO serve as a resident advocate and are prohibited from disclosing information on reports of abuse to anyone without the written consent of the subject of the report. However, under the state's mandated reporting laws, LTCO are required to receive and initiate investigations of reports of abuse. The author contends that the LTCO is not designed to carry-out investigative roles due to their federal prohibition from disclosing information on reports - a prohibition which precludes reporting to law enforcement and licensing agencies - even when the subject's well-being may be in jeopardy. Without the consent of the resident(s) involved, or their legal representatives, criminal activities that would otherwise be subject to swift and decisive action by law enforcement and licensing agencies, is left to the advocacy devices of volunteers.

The Welfare and Institutions Code acknowledges the conflict, yet affirms that LTCO can only cross report with the consent of the resident (§ 15640.5(d)), further stating that; "If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record." According to the author, this becomes particularly troubling in abuse cases reported to the LTCO where the victim is unable to offer consent to share information with law enforcement personnel in order to complete a thorough investigation and secure justice-it creates a loophole which allows criminal activity to go unchecked.



AMENDED IN SENATE JUNE 4, 2012  
AMENDED IN SENATE MARCH 21, 2012  
AMENDED IN ASSEMBLY MARCH 21, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 40**

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**Introduced by Assembly Member Yamada**

December 6, 2010

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An act to amend Sections 15630 and 15631 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Yamada. Elder and dependent adult 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, and authorizes any person who is not a mandated reporter, to report the abuse to the local ~~ombudsperson~~ *ombudsman* 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 require that a ~~report made by telephone by a~~ mandated reporter *make a telephone report* to report suspected or alleged physical abuse, as defined, that ~~occurred~~ *occurs* in a long-term care facility, ~~be made to the local law enforcement agency, within 2 hours of the reporter observing, obtaining knowledge of, or suspecting the physical abuse.~~

*The bill would require that ~~the~~ a written report be made to both the local ombudsperson ~~ombudsman~~, the corresponding licensing agency, and the local law enforcement agency within 24 hours of the reporter observing, obtaining knowledge of, or suspecting the physical abuse.*

Existing law authorizes a mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated occurred in a state mental hospital or a state developmental center, to report to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ~~ombudsperson~~ *ombudsman*.

This bill would delete the local ~~ombudsperson~~ *ombudsman* from the list of *persons* to whom the mandated reporter may report to under these circumstances. This bill would authorize a person who is not a mandated reporter to report suspected or alleged abuse that occurred in a long-term care facility to both a long-term care ~~ombudsperson~~ *ombudsman* program or local law enforcement agency.

By changing the scope of an existing crime, this bill would impose a state-mandated local program. By increasing the duties of 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 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

private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

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

(A) (i) If the suspected or alleged abuse is physical abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, ~~a report made by telephone report~~ shall be made to the local law enforcement agency *within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and the a written report shall be made to both the local ombudsperson ombudsman, the corresponding licensing agency, and the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse. When applicable, reports made pursuant to this subparagraph shall be deemed to satisfy the reporting requirements of the federal Elder Justice Act of 2009, Subtitle H of the federal Patient Protection and Affordable Care Act (Public Law 111-148), Section 1418.91, and 22 CCR 72541. When a local law enforcement agency receives an initial report of suspected abuse in a long-term care facility pursuant to this paragraph, the local law enforcement agency shall coordinate efforts with the local ombudsman to provide the most immediate and appropriate response warranted to investigate the*

1 mandated report. The local ombudsman and local law enforcement  
2 agencies may collaborate to develop protocols to implement this  
3 subparagraph.¶

4 (ii) In lieu of the procedure described in clause (i), when the  
5 suspected abuse is allegedly caused by a resident with a physician's  
6 diagnosis of dementia, and there is no significant or substantial  
7 injury, as reasonably determined by the mandated reporter,  
8 drawing upon his or her training or experience, the reporter shall  
9 report to the local ombudsman or law enforcement agency by  
10 telephone, in writing, or through the confidential Internet reporting  
11 tool established in Section 15658, within two working days.

12 (B) Notwithstanding the rulemaking provisions of Chapter 3.5  
13 (commencing with Section 11340) of Part 1 of Division 3 of Title  
14 2 of the Government Code, or any other law, the department may  
15 implement subparagraph (A), in whole or in part, by means of  
16 all-county letters, provider bulletins, or other similar instructions  
17 without taking regulatory action.

18 (C) If the suspected or alleged abuse is abuse other than physical  
19 abuse, as defined in Section 15610.63, and the abuse occurred in  
20 a long-term care facility, except a state mental health hospital or  
21 a state developmental center, a ~~telephone report made by telephone~~  
22 ~~and the a~~ written report shall be made to the local ~~ombudsperson~~  
23 ombudsman or the local law enforcement agency.

24 The local ~~ombudsperson~~ ombudsman and the local law  
25 enforcement agency shall, as soon as practicable, except in the  
26 case of an emergency or pursuant to a report required to be made  
27 pursuant to clause (v), in which case these actions shall be taken  
28 immediately, do all of the following:

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

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

38 (iii) Report to the State Department of Public Health and the  
39 California Department of Aging any case of known or suspected



1 abuse occurring in an adult day health care center, as defined in  
2 subdivision (b) of Section 1570.7 of the Health and Safety Code.

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

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

8 ~~(B)~~

9 (D) If the suspected or alleged abuse occurred in a state mental  
10 hospital or a state developmental center, the report shall be made  
11 to designated investigators of the State Department of Mental  
12 Health or the State Department of Developmental Services, or to  
13 the local law enforcement agency.

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

17 ~~(C)~~

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

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

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

38 (C) Notwithstanding any other provision in this section, a clergy  
39 member who is not regularly employed on either a full-time or  
40 part-time basis in a long-term care facility or does not have care

1 or custody of an elder or dependent adult shall not be responsible  
2 for reporting abuse or neglect that is not reasonably observable or  
3 discernible to a reasonably prudent person having no specialized  
4 training or experience in elder or dependent care.

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

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

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

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

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

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

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

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

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

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

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

39 (B) This paragraph shall not be construed to require a mandated  
40 reporter to seek, nor to preclude a mandated reporter from seeking,



1 information regarding a known or suspected incident of abuse prior  
2 to reporting. This paragraph shall apply only to those categories  
3 of mandated reporters that the State Department of Public Health  
4 determines, upon approval by the Bureau of Medi-Cal Fraud and  
5 Elder Abuse and the state long-term care ~~ombudsperson~~  
6 *ombudsman*, have access to plans of care and have the training  
7 and experience necessary to determine whether the conditions  
8 specified in this section have been met.

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

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

23 (3) If the suspected or alleged abuse occurred in a state mental  
24 health hospital or a state developmental center, the report may be  
25 made to the designated investigator of the State Department of  
26 Mental Health or the State Department of Developmental Services  
27 or to a local law enforcement agency. Except in an emergency,  
28 the local ~~ombudsperson~~ *ombudsman* and the local law enforcement  
29 agency shall report any case of known or suspected criminal  
30 activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon  
31 as is practicable.

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

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

38 (d) If two or more mandated reporters are present and jointly  
39 have knowledge or reasonably suspect that types of abuse of an  
40 elder or a dependent adult for which a report is or is not mandated

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

8 (e) A telephone report or Internet report, as authorized by  
9 Section 15658, of a known or suspected instance of elder or  
10 dependent adult abuse shall include, if known, the name of the  
11 person making the report, the name and age of the elder or  
12 dependent adult, the present location of the elder or dependent  
13 adult, the names and addresses of family members or any other  
14 adult responsible for the elder's or dependent adult's care, the  
15 nature and extent of the elder's or dependent adult's condition, the  
16 date of the incident, and any other information, including  
17 information that led that person to suspect elder or dependent adult  
18 abuse, as requested by the agency receiving the report.

19 (f) The reporting duties under this section are individual, and  
20 no supervisor or administrator shall impede or inhibit the reporting  
21 duties, and no person making the report shall be subject to any  
22 sanction for making the report. However, internal procedures to  
23 facilitate reporting, ensure confidentiality, and apprise supervisors  
24 and administrators of reports may be established, provided they  
25 are not inconsistent with this chapter.

26 (g) (1) Whenever this section requires a county adult protective  
27 services agency to report to a law enforcement agency, the law  
28 enforcement agency shall, immediately upon request, provide a  
29 copy of its investigative report concerning the reported matter to  
30 that county adult protective services agency.

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

36 (3) The requirement to disclose investigative reports pursuant  
37 to this subdivision shall not include the disclosure of social services  
38 records or case files that are confidential, nor shall this subdivision  
39 be construed to allow disclosure of any reports or records if the

1 disclosure would be prohibited by any other provision of state or  
2 federal law.

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

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

24 SEC. 2. Section 15631 of the Welfare and Institutions Code is  
25 amended to read:

26 15631. (a) Any person who is not a mandated reporter under  
27 Section 15630, who knows, or reasonably suspects, that an elder  
28 or a dependent adult has been the victim of abuse may report that  
29 abuse to a long-term care ~~ombudsperson~~ *ombudsman* program or  
30 local law enforcement agency, or both the long-term care  
31 ~~ombudsperson~~ *ombudsman* program and local law enforcement  
32 agency when the abuse is alleged to have occurred in a long-term  
33 care facility.

34 (b) Any person who is not a mandated reporter under Section  
35 15630, who knows, or reasonably suspects, that an elder or a  
36 dependent adult has been the victim of abuse in any place other  
37 than a long-term care facility may report the abuse to the county  
38 adult protective services agency or local law enforcement agency.

39 SEC. 3. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution for certain

1 costs that may be incurred by a local agency or school district  
2 because, in that regard, this act creates a new crime or infraction,  
3 eliminates a crime or infraction, or changes the penalty for a crime  
4 or infraction, within the meaning of Section 17556 of the  
5 Government Code, or changes the definition of a crime within the  
6 meaning of Section 6 of Article XIII B of the California  
7 Constitution.

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